

DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

Clause wise Discussion on the Draft Constitution

30th July 1949 to 16th September 1949

SECTION SIX

Clausewise Discussion

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NEW ARTICLE 79-A

The Honorable Dr. B. R. Ambedkar (Bombay: General):

Sir, I move:

That in amendment No. I of List I (First Week) of Amendments to Amendments, for the proposal new article 79-A, the following be substituted: —

Secretariat of Parliament " 79-A. (1) Each House of Parliament shall have a separate Secretarial Staff:

Provided that nothing in this clause shall be construed as preventing the creation of posts common to both Houses of Parliament.

(2) Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.

(3) Until provision is made by Parliament under clause (2) of this article, the President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, as the case may be. make rules regulating the recruitment and the conditions of service of persons appointed to the secretarial staff of the House of the People or the Council of States, and any rules so made shall have effect subject to the provisions of any law made under the said clause. "

The House will see that this is a new article, which is sought to be introduced in the Constitution. The reason why the Drafting Committee felt the necessity of introducing an article like this lies in the recent Conference that was held by the Speakers of the various Provinces in which it was said that such a provision, ought to be made in the Constitution.

It was, as every one most probably in this House knows, a matter of contention between the Executive Government and the President ever since the late Mr. Vithalbhai Patel was called upon to occupy the President's Chair in the Assembly. A dispute was going on between the Executive Government and the President of the Assembly. The President had contended that the Secretariat of the Assembly should be independent of the Executive Government. The Executive Government of the day, on the other hand, contended that the Executive had the right to nominate, irrespective of the wishes and the control of the President, the personnel and the staff required to serve the purposes of the Legislative Assembly. Ultimately, the Executive Government in 1928 or 1929 gave in and accepted the contention of the then President and created an independent secretariat for the Assembly. So far, therefore, as the Central Assembly is concerned, there is really no change effected by this new article 79-A, because what is provided in clause (1) of article 79-A is already a fact in existence.

But, it was pointed out that this procedure which has been adopted in the Central Legislature as far back as 1928 or 1929 has not been followed by the various provincial legislatures. In some provinces, the practice still continues of some officer who is subject to the disciplinary jurisdiction of the Legislative Department being appointed to act as the secretary of the Legislative Assembly, with the result that that officer is under a sort of a dual control, control exercised by the department of which he is an officer and the control by the President under whom for the time being he is serving. It is contended that this is derogatory to the dignity of the Speaker and the independence of the Legislative Assembly.

The Conference of the Speakers passed various resolutions insisting that besides making this provision in the Constitution, several other provisions should also be made in the Constitution so as to regulate the strength, appointment, conditions of service, and so on and so on. The Drafting Committee was not prepared to accept the other contentions raised by the Speakers' Conference. They thought that it would be quite enough if the Constitution contained a simple clause stating that Parliament should have a separate secretarial staff and the rest of the matter is left to be regulated by Parliament. Clause (3) provides that, until any provision is made by

Parliament, the President may, in consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules for the recruitment and the conditions of service. When Parliament enacts a law, that law will override the rules made *pro tempore* by the President in consultation with the Speaker of the House of the People. I think that the provision that we have made is sufficient to meet the main difficulty, which was pointed out by the Speakers' Conference. I hope the House will find no difficulty in accepting this new article.

[Amendments 43 and 44 of List II (First Week) were not moved.]

The Honorable Dr. B. R. Ambedkar: Sir, nothing that has been said, in my judgment, calls for a reply.

[All the 8 amendments were negatived. The motion of Dr. Ambedkar as shown above was adopted.]

New article 79-A was added to the constitution.

ARTICLE 104

The Honorable Dr. B. R. Ambedkar: Sir, I move:

That for article 104, the following article be substituted: — (Salaries etc, of Judges).

"104. (1) There shall be paid to the judges of the Supreme Court such salaries as are specified in the Second Schedule.

(2) Every judge shall be entitled to such privileges and allowances and to such rights in respect of leave of absence and pension as may from time to time be determined by or under law made by Parliament, and until so determined, to such privileges, allowances and rights as are specified in the Second Schedule:

Provided that neither the privileges nor the allowances of a judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment."

Sir, all that I need say is that the present article is the same as the original article except that the word " privileges " has been introduced which did not occur in the original text. What those privileges are I would not stop to discuss now. We will discuss them when we come to the second schedule where some of them might be specifically mentioned.

Shri R. K. Sidhva: ...Unless you amend the language of this Schedule in view of the amended resolution, I think, Sir, this article will be rather in a confused state. I want to know what are the implications after the amendment of this article moved by Dr. Ambedkar. I find that he has not made any reference to the Schedule and I do not know whether he is going to make any reference to the Schedule hereafter, because that complicates the issue, and the purpose will be defeated if the matter is left to Parliament, who can against the wishes of the House pass orders that the Chief Justice can be given a furnished house.

The Honorable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am sorry I cannot accept the amendment moved by my Honorable Friend, Pandit Kunzru, and I think there are two valid objections which could be presented to the House for rejecting his amendment. In the first place, as regards the principle for which he is fighting, namely, that the rights of a judge to his salary and pension once he is appointed have accrued to him and shall not be liable to be changed by Parliament by any law that Parliament may like to make with regard to that particular matter. I think, so far as my new article is concerned, I have placed that matter outside the jurisdiction of Parliament. Parliament, no doubt, has been given the power from time to time to make laws for changing allowances, pensions etc., but it has been provided in the article that that shall apply only to new judges and shall not affect the old judges if that is adverse to the rights that have already accrued. Therefore, so far as the principle is concerned for which he is fighting, that principle has already been embodied in this article.

From another point of view, his amendment seems to be quite objectionable and the reason for this is as follows. As everybody knows "pensions have a definite relation to salary and the number of years that a judge has served. To say, as my Honorable Friend, Pandit Kunzru suggests, that the Supreme Court judges should get a pension not less * than the pension to which each one of them would be entitled in pursuance of the rules that were applicable to judges of the Federal Court, seems to presume that the Federal Court judge if he is appointed a judge of the Supreme Court shall continue to get the same salary that he is getting. Otherwise that would be a breach of the principle that pensions are regulated by the salary and the number of years that a man has put in. We have not yet come to any conclusion as to whether the Federal Court Judges should continue to get the same salary that they are getting when they are appointed to the Supreme Court. That matter, as I said, has not been decided and I doubt very much (I may say in anticipation) whether it will be possible for the Drafting Committee to advocate any such distinction as to salary between existing judges and new judges. The

amendment, therefore, is premature. If the House accepts the proposition for which my Honorable Friend, Pandit Kunzru is contending that the Federal Court Judges should continue to get the same salary, then probably there might be some reason in suggesting this sort of amendment that he has moved. At the present moment, I submit it is quite unnecessary and it is impossible to accept it because it seeks to establish a pension on the basis that the existing salary will be continued which is a proposition not yet accepted by the House.

Shri R. K. Sidhwa: The Honorable Dr. Ambedkar has not answered my point as to how the Parliament is competent to give a furnished house to the Chief Justice.

The Honorable Dr. B. R. Ambedkar: We are not rejecting it. Nothing is said about the furnished house. We shall discuss that.

[The amendment of Pandit Kunzru was negatived and the motion moved by Dr. Ambedkar as shown before was accepted. Article 104, as amended was added to the Constitution.]

NEW ARTICLE 148-A

The Honorable Dr. B. R. Ambedkar: Sir, I move :

That after article 148, the following new article be inserted :— (Abolition or creation of Legislative Councils to States).

"148 A.(1) Notwithstanding anything contained in article 148 of this Constitution, Parliament may by law provide for the abolition of the Legislative Council of a State having such a Council, or for the creation of such a Council in a State having no such Council, if the

Legislative Assembly of the State passes a resolution to that effect by a majority of the total membership of the Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.

(2) Any law referred to in clause (1) of this article shall contain such provisions for the amendment of this Constitution as may be necessary to give effect to the provisions of the law and may also contain such incidental and consequential provisions as Parliament may deem necessary.

(3) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purpose of article 304 thereof. "

As Honorable members will see, this new article 148A provides for two contingencies : (i) for the abolition of the Second Chamber in those province which will have a Second Chamber at the commencement of the Constitution and (ii) for the creation of a Legislative Council in a province which at the commencement of the Constitution has decided not to have a Legislative

Council but may subsequently decide to have one.

The provision of this article follow very closely the provisions contained in the Government of India Act, section 60, for the creation of the Legislative Council and section 308 which provides for the abolition. The procedure adopted here for the creation and abolition is that the matter is really left with the Lower Chamber, which by a resolution may recommend either of the two courses that it may decide upon. In order to facilitate any change made either in the abolition of the Second Chamber or in the creation of a Second Chamber, provision is made that such a law shall not be deemed to be an amendment of the Constitution, in order to obviate the difficult procedure which has been provided in the Draft Constitution for the amendment of the Constitution.

I commend this article to the House.

The Honorable Dr. B. R. Ambedkar: I do not think any reply is called for.

Mr. President: I shall now put the amendments to the vote. I shall take up Prof. Saksena's amendment first and I shall put it in two parts.

[3 Amendments were negatived, one was withdrawn and the motion of Dr. Ambedkar as mentioned above was adopted. New article 148A was added to the Constitution.]

ARTICLE 150

The Honorable Dr. B. R. Ambedkar: Sir, I move :

That for article 150, the following be substituted :—(Composition of the Legislative Councils).

"150 (1) The total number of members in the Legislative Council of a State having such a Council shall not exceed twenty-five per cent of the total number of members in the Assembly of the State :

Provided that the total number of members in the Legislative Council of a State shall in no case be less than forty.

(2) The allocation of seats in the Legislative Council of a State, the manner of choosing persons to fill those seats, the qualifications to be possessed for being so chosen and the qualification entitling persons to vote in the choice of any such persons shall be such as Parliament may by law prescribe. "

The original article was modelled in part on article 60 of the first Draft of the Drafting Committee. Now, the House will remember that that article 60 of the

original Draft related to the composition of the Upper Chamber at the Center. For reasons, into which I need not go at the present stage, the House did not accept the principle embodied in the old article 60. That being so, the Drafting Committee felt that it would not be consistent to retain principle which has already been abandoned in the composition of the upper chamber for the Provinces. That having been the resulting position, the Drafting Committee was presented with a problem to suggest an alternative. Now I must confess, that the Drafting Committee could not come to any definite conclusion as to the composition of the upper chamber. Consequently they decided—you might say that they merely decided to postpone the difficulty—to leave the matter to Parliament. At the present moment I do not think that the Drafting Committee could suggest any definite proposal for the adoption of the House, and therefore they have adopted what might be called the line of least resistance in proposing sub-clause (2) of article 150. That, as I said, also creates an anomaly, namely, that the Constitution prescribes that certain provinces shall have a second chamber, as is done in article 148-A, but leaves the matter of determining the composition of the second chamber to Parliament.

These are, of course, anomalies. For the moment there is no method of resolving those anomalies, and I therefore request the House to accept, for the present, the proposals of the Drafting Committee as embodied in article 150 which I have moved.

[Amendment No. 90 of List III (First Week) was not moved.]

Shri H. V. Kamath : Sir, I move :

" That in amendment No. 5 of List I (First Week) of Amendments to Amendments, in clause (2) of the proposed article 150, for the words ' the qualifications to be possessed for being chosen ' the words ' qualifications and disqualifications for membership of the Council ' be substituted. "

The House will see that on a previous occasion with regard to the election of members to the legislature of a State they adopted various articles in the relevant parts. I would invite the attention of the House to article 167 for instance, which lays down the disqualifications for membership of the State Assembly in addition to the qualifications which have gone before. In providing for representation in the upper chamber and election of members to this Council I do not see why this House should not with equal validity, equal reason and equal force lay down not merely the qualifications of members to be chosen to the upper chamber but also what the disqualifications should be. Article 167 lays down how under various circumstances a member is to be

disqualified for being chosen as or being a member of the Assembly or the Council of a State. Therefore I do not see any reason why the same thing should not be explicitly stated in article 150 moved by Dr. Ambedkar.

There is one other point about the article and that is this. The new amendment lays down that the strength of the Council shall not exceed one-fourth or 25 per cent of the total number of members in the lower House. It also lays down further in a proviso, " Provided that the total number of members in a Legislative Council of a State shall in no case be less than forty." How these two can be reconciled in particular cases passes my understanding. For instance, we have adopted article 148...

The Honorable Dr. B. R. Ambedkar: I would ask the Honorable Member to read article 167 again.

Shri H. V. Kamath : I am talking of the next point.

The Honorable Dr. B. R. Ambedkar: What about the first point ? Do you favour it ?

Shri H. V. Kamath : I do not favour it. Dr. Ambedkar says that article 167 lays down the disqualifications.....

The Honorable Dr. B. R. Ambedkar: Both for the Assembly and the Council of States.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : ...This clause looked very simple and inoffensive and the effect was that the number of members of the Legislative Council shall not be more than 25 per cent.

The Honorable Dr. B. R. Ambedkar: Sir, I rise on a point of Order. My Friend is criticising a draft which is not before the House.

Mr. Naziruddin Ahmad : I was trying to show how this unsatisfactory state of affairs in today's amendments arose.

The Honorable Dr. B. R. Ambedkar: It is not before the Members.

The Honorable Dr. B. R. Ambedkar: Sir, there are only two points of comment, which I think call for a reply. The one point of comment, that was made both by Mr. Kamath as well as by my Friend, Mr. Naziruddin Ahmad, was that according to the proposal now placed before the House, there is a certain amount of disproportion between the membership of the Upper House and the membership of the Lower House in certain provinces. He cited the instance. I believe, if I heard him correctly, that in the province of Orissa, the

members of the Lower House, on the principles which we have laid down in article 149 of the Constitution, would be near about 60. Consequently, if the minimum for an Upper House was 40, in Orissa the Upper House would be disproportionate to the Lower House in strength. Now, I think my Friend, Mr. Naziruddin Ahmad, has not taken into consideration the circumstances which have intervened during the interval. He has for instance completely forgotten that Orissa is now a much bigger province on account of the merger of the several States, which were at one time independent of Orissa, and I understand that taking the area of the States and the population which will be included in the boundaries of Orissa, the Lower House is likely to be 150. Consequently, the possibility of any such disparity, as he pointed out, no longer exists. I may also at this stage say that if the House passes what is proposed as article 172 which regulates the question of difference of opinion between the Upper House and the Lower House, this question of disparity of principles between the Lower House and the Upper House loses all its importance, because under article 172 we no longer propose to adopt the same procedure that was adopted with regard to the two Chambers at the Center, namely a joint session. What we propose to do is to permit the view of the Lower House to prevail over the view of the Upper House in certain circumstances. Consequently, the Upper House by reason of this different political complexion has no possibility of overturning the decision of a majority or a large majority of the Lower House. That I think, completely disposes of the first point of comment raised by my Honorable Friend, Mr. Naziruddin Ahmad.

I come to the second question which was very strongly raised by my Honorable Friend, Pandit Lakshmi Kanta Maitra. His argument was : Why should you leave it to Parliament ? How can it be left to Parliament ? I think the answer that I can give to him, at any rate, so far as I am concerned, is quite satisfactory. I should like to point to him in the first instance that it is not to be presumed that the Drafting Committee did not at any stage make a constructive proposal for the composition of the Upper House in the Constitution itself. If my Honorable Friend will remember there stood in the name of myself and my Friend, Mr. T. T. Krishnamachari an amendment which is No. 139 in this consolidated list of amendments to amendments which has been circulated and there he will find that we have made a constructive suggestion for the composition of the Upper House. Unfortunately that was not accepted in another place and consequently, we did not think it advisable to continue to press that particular amendment. He will therefore see that the Drafting Committee must be exonerated from all blame that might be attached to it by reason of not having made any effort to

solve this difficulty ; they did try, but they did not succeed. My Honorable Friend will also realize that the Drafting Committee was presented with altogether 28 amendments on this subject. They range here in this list from 123 to 148. If he were to read the amendments carefully in all their details, he will notice the bewildering multiplicity of the suggestions, the conflicting points of view and the unwillingness of the movers of the various amendments to resile from their position to come to some kind of a common conclusion. It was because of this difficult situation the Drafting Committee thought that rather than put forth a suggestion which was not likely to be accepted by the majority of the House, it would leave it to Parliament.

Shri H. V. Kamath : Is Dr. Ambedkar sure that Parliament will be presented with less multiplicity ?

The Honorable Dr. B. R. Ambedkar: If my Honorable Friend will give me time, I will reply to that part also.

My Honorable Friend, Pandit Maitra, said : How is it conceivable that a part of the Constitution of so important an institution as the Upper Chamber could be left to be decided by Parliament and not be provided in the Constitution ? I think my Honorable Friend, Pandit Maitra, will realize and I should like to point out to him quite definitely what we are doing with regard to the Lower House both in the Provinces or the States as well as at the Center. If he will refer to article 149, which we have already passed, what we have done is we have merely stated that there shall be certain principles to govern the delimitation of constituencies, that a constituency is not to have less than so many and more than so many, but the actual work of delimiting the constituencies is left to Parliament itself and unless Parliament passes a law delimiting the various constituencies for the Lower House at the Center, it will not be possible to constitute the Lower House.

Pandit Lakshmi Kanta Maitra : That is inevitable.

The Honorable Dr. B. R. Ambedkar: Again take another illustration, namely, the allocation of seats. The actual allocation will have to be done by law by Parliament. Therefore, if such important matters of detail could be left to Parliament to determine by law, I do not see what grave objection could there be for a matter regarding the composition of the Upper Chamber being also left to Parliament. I cannot see any objection at all. Secondly, I feel personally that having regard to the conflicting view-points that have been presented in the 28 amendments that are before the House, I thought it would be much better for Parliament to take up the responsibility because Parliament will certainly have more time at its disposal than the Drafting Committee had and Parliament would have more information to weigh this proposal, because Parliament then would be in a position to correspond with

the various provincial Governments, to find out their difficulties, to find out their points of view and their proposals and to arrive at some common *via media* which might be put into law. Therefore, in putting forth this proposal, I think, we are not making any 'very serious departure from the principles we have already adopted and as my Honorable Friend, Mr. T. T. Krishnamachari said, taking all these into consideration, there is nothing for the Drafting Committee to apologize but to recommend the proposal to the House.

Pandit Govind Malaviya (United Provinces : General) : I move. Sir, that the consideration of this article be held over.

Shri Brajeshwar Prasad : I beg to second this proposal.

The Honorable Dr. B. R. Ambedkar: I have no objection. We can have another go at it.

Mr. President: Then I take it that Members are agreed that this article should be held over.

Honorable Members : Yes.

NEW ARTICLE 163-A

The Honorable Dr. B. R. Ambedkar: Sir, I beg to move :

" That in amendment No. 12 of List I (First Week) of Amendments to Amendments for the proposed new article 163-A, the following be substituted:—

" 163-A. (1) The House or each House of the Legislature of a State shall have a secretarial staff of State Legislatures separate secretarial staff:

Provided that nothing in this clause shall, in the case of the Legislature of a State having a Legislative Council, be construed as preventing the creation of posts common to both Houses of such Legislature.

(2) The Legislature of a State may by law regulate the recruitment and the conditions of service of persons appointed to the secretarial staff of the House or House of the Legislature of the State.

(3) Until provision is made by the Legislature of the State under clause (2) of this article, the Governor may after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, as the case may be, make rules regulating the recruitment and the conditions of service of persons appointed to the secretariat staff of the Assembly or the Council, and any rules so made shall have effect subject to the provisions of any law made under the said clause. "

This article is merely a counterpart of article 79-A which we considered this morning.

Shri H. V. Kamath : Mr. President, Sir..... In articles 79-A and 148-A, points of substance were made out by various amendments by my Honorable Friend, Prof. Shibban Lal Saksena and myself. But when his turn came. Dr. Ambedkar was good enough, wise enough just to say that he did not wish to say anything.

The Honorable Dr. B. R. Ambedkar: I said no reply was called for.

Shri H. V. Kamath : That is left to his judgment. But, when certain substantial points are raised, they call for some sort of reply. Of course, he is buttressed, fortified by the core-knowledge of the fact that when he says, ' yes ' he will carry the House with him. It is of course up to him to decide what he will reply to and what he will not. But, the House is entitled to hear his view. If he is too tired, too fatigued, he may ask one of his wise colleagues.....

The Honorable Dr. B. R. Ambedkar: Who is to determine whether the points are points of substance ? If the President gave a ruling that the point is one of substance, I should certainly reply. I cannot leave the matter to be determined by Mr. Kamath himself.

Mr. President: Does any Member wish to say anything ?

(No Member rose to speak.)

Would Dr. Ambedkar like to say anything ?

The Honorable Dr. B. R. Ambedkar: No.

Mr. President: I will then put the amendments to vote.

[All 8 amendments were negatived. Article 163-A as moved by Dr. Ambedkar was put to vote and adopted. New Article 163-A was added to the Constitution.]

ARTICLE 175

Mr. President: Shall we take up 172 now ?

The Honorable Dr. B. R. Ambedkar: We shall keep it back for the moment.

Mr. President: Shall we take up No. 175?

The Honorable Dr. B. R. Ambedkar: Yes.

Shri H. V. Kamath : What about 127-A?

Mr. President: That will come up along with 210.

Let us take up new 175. There are some amendmednts to it.

(Amendments Nos. 16 and 17 were not moved.)

The Honorable Dr. B. R. Ambedkar: Mr. President, Sir I beg to move that:

" That for the proviso to article 175 the following proviso be substituted :—

' Provided that the Governor may, as soon as possible after the presentation to him of the Bill for assent, return the Bill if it is not a money Bill together with a message requesting that the House or Houses will reconsider the Bill or any specified provisions thereof and, in particular, will consider the desirability of introducing any such amendments as he may recommend in his message, and when a Bill is so returned, the House or Houses shall reconsider the Bill accordingly, and if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom. ' "

Sir, this is in substitution of the old proviso. The old proviso contained three important provisions. The first was that it conferred power on the Governor to return a Bill before assent to the Legislature and recommend certain specific points for consideration. The proviso as it stood left the matter of returning the Bill to the discretion of himself. Secondly, the right to return the Bill with the recommendation was applicable to all Bills including money Bills. Thirdly, the right was given to the Governor to return the Bill only in those cases where the Legislature of a province was unicameral. It was felt then that in a responsible government there can be no room for the Governor acting on discretion. therefore the new proviso deletes the word ' in his discretion '. Similarly it is felt that this right to return the Bill should not be extended to a money Bill and consequently the words ' if it is not a money Bill ' are introduced. It is also felt that this right of a Governor to return the Bill to the Legislature need not necessarily be confined to cases where the Legislature of the province is unicameral. It is a salutary provision and may be made use of in all cases even where the Legislature of a province is bicameral.

It is to make provision for these three changes that the new proviso is sought to be substituted for the old one, and I hope the House will accept it.

Mr. President: I have notice of some amendments which are printed in the Supplementary List. Does any Member wish to move any of the amendments ? They are in the names of Shri Satish Chandra, Shri B. M. Gupte and Prof. Shibban Lal Saksena.

(The amendments were not moved.)

Mr. President: We were dealing with article 175 day before yesterday before we rose. We shall now continue discussion on article 175....

Shri T. T. Krishnamachari (Madras : General) : Sir, may I submit that that article has very little to do with article 172. ...I suggest that article 175 be considered apart from 172.

Mr. President: Would it not be better if we were to dispose of 172 first?

Shri T. T. Krishnamachari : That is entirely to be decided at your discretion. We may take up 172 first and then have the vote on 175.

Mr. President: Do you have any objection ?

The Honorable Dr. B. R. Ambedkar (Bombay : General) : I have no objection. Sir, I am entirely in your hands.

Mr. President: Then we shall dispose of 172 first and then goto 175.

ARTICLE 172

The Honorable Dr. B. R. Ambedkar; Mr. President, Sir, I move :

"That for article 172, the following article he substituted :—(Restriction of powers of Legislative Council as to Bill other than Money Bills).

'172. (1) If after a Bill has been passed by the Legislative Assembly of a State having a Legislative Council and transmitted to the Legislative Council-

- (a) the Bill is rejected by the Council; or
- (b) more than two months elapse from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree, the Legislative Assembly may again pass the Bill in the same or in any subsequent session with or without any amendments which have been made, suggested or agreed to by the Legislative Council and then transmit the Bill as so passed to the Legislative Council.

(2) If after a Bill has been so passed for the second time by the Legislative Assembly and transmitted to the Legislative Council—

- (a) the Bill is rejected by the Council; or
- (b) more than one month elapses from the date on which the Bill is laid before the Council without the Bill being passed by it; or
- (c) the Bill is passed by the Council with amendments to which the Legislative Assembly does not agree ;

the Bill shall be deemed to have been passed by the Houses of the Legislature of the State in the form in which it was passed by the Legislative Assembly with such amendments if any, as have been agreed to by the Legislative Assembly.

(3) Nothing in this article shall apply to a Money Bill. ' "

The House will remember that when we discussed the question of the

resolution of the differences between the Council of States and the House of the People, we discussed the different methods by which such differences would be resolved, and we came to the conclusion that having regard to the Federal character of the Central Legislature it was proper that the differences between the two Houses should be resolved by a joint session of both the Houses called by the President for that purpose. It was at that time suggested that instead of adopting the procedure of a joint session we should adopt the procedure contained in the Parliament Act of 1911 under which the decision of the House of Commons with regard to any particular Bill, other than a Money Bill prevails in the final analysis when the House of Lords has failed to agree or refused to agree. to the amendment suggested by the House of Commons after a certain period has elapsed. On a consideration of this matter, it was felt that the procedure laid down in the Parliament Act for the resolution of the differences between the two Houses of the Legislature was more appropriate for the resolution of difference between the two Houses set up in the Provinces. Consequently we have made a departure from the original article and introduce this new article embodying in it the proposal that the decision of the more popular House representing the people as a whole ought to prevail in case of a difference of opinion which the two Houses have not been able to reconcile by mutual agreement.

Sir, I move.

Pandit Hirday Nath Kunzru : ...I think considering the changes that have been made by the Drafting Committee itself from time to time there is no principle on which it is proceeding. My Honorable Friend Dr. Ambedkar says there is a very good principle.

Honorable Dr. B. R. Ambedkar: I say there is no principle.

Pandit Hirday Nath Kunzru : I am glad my Honorable Friend admits that there is no principle underlying the amendment that he has suggested to the House.

The Honorable Dr. B. R. Ambedkar: It is a matter of expediency and practicality.

Pandit Hirday Nath Kunzru : He admits it is a question of expediency and practicality....

The Honorable Dr. B. R. Ambedkar: Mr. President, Sir, as I listened to the debate, I find that there are some very specific questions which have been

raised by the various speakers who have taken part in the debate. The first point was raised by my Friend Mr. Santhanam and I would like to dispose of that before I turn to the other points. Mr. Santhanam said that a provision ought to be made in clause (1) of the article to provide for a case where the Upper House has not passed the Bill in the form in which it was passed by the Assembly. I think that on further consideration, he will find that his suggestion is actually embodied in sub-clause(c), although that clause has been differently worded. We have as a matter of fact provided for three cases on the occurrence of which the Lower House will take jurisdiction to act on its own authority. The three cases are : firstly when the Bill is considered but rejected completely; secondly, when the Upper House is either sitting tight and taking no action or has taken action but has delayed beyond the time which is permitted to it for consideration of the Bill ; and thirdly, when they do not agree to pass the Bill in the same form in which it has been passed by the Assembly, which practically means what my Friend Mr. Santhanam is suggesting. I therefore do not think there is any necessity to revise this part of the article. I might say incidentally that in devising the three categories or conditions on the occurrences of which the Lower House would have the power to act on its own authority, the words have more or less been taken closely from article 57 of the Australian Constitution.

Now, I come to the general points that have been raised. It seems to me in discussing this matter, there are three different questions that arise for consideration. The first question is how many journeys the Bill should undertake before the will of the Lower House becomes paramount. Should it be one journey, two journeys or more than two journeys ? That is one question. The second question is, what should be the period that should be allotted to the Upper House for each journey, both going and coming back ? The third question is, how is the period within which the Council is to act to be reckoned. To use the phraseology which is familiar to those who know the law of limitation, what is to be the starting point ? So far as the present amendment is concerned, it is proposed that the Bill should have two journeys. It goes in the first instance, it comes back and it goes again. It may be possible to argue that more journeys than two are to be permitted. As I said, this is a question of practical politics. We must see some end, or dead end, at which we must allow the authority of the Lower House to become paramount, and the Drafting Committee thought that two journeys were enough for the purpose to allow the Upper House to act as a revising Chamber.

Now, with regard to the time to be permitted, to the Upper House during these journeys to consider the Bill, the proposal of the Drafting Committee is

two months. Now it may be three months, in the first case, as I am accepting the amendment moved by my Friend, Mr. T. T. Krishnamachari, and in the second case it would be one month.

My Friend Pandit Kunzru said that the Drafting Committee had no fixed mind, that it was changing from moment to moment, that it was fickle, and he referred to the original Draft set out in the Draft Constitution laying down six months. Here again, I should like to point out to him that the period to be allowed to each House is not a matter of principle at all. It is a matter only of practical politics and the Drafting Committee came to the conclusion that six months was too long a period. In fact, it felt that even three months was too long a period. But it is quite conceivable that a Bill like the Zamindari Bill which has a large number of clauses, may emerge from the Lower House and may be sent to the Upper House for consideration. But for such exceptional cases, I think my Friend will agree that other measures would not, be of the same magnitude or the same substance. Consequently, we thought that three months was a reasonable period to allow to the Upper House in the case when the Bill goes on its first journey, because after all what is the Upper House going to do ? The Upper House in acting upon a Bill which has been sent to it by the Lower Chamber is not going to re-draft the whole thing ; it is not going to alter every clause. It is only certain clauses which it may feel of public importance that it would like to deal with, and I should have thought that for a limited legislative activity of that sort, three months in the first instance was a large enough period to allow to the Upper House and would not certainly curtail the legitimate activity of a Second Chamber. In the second case, we felt that when the Lower House had more or less indicated to the Upper House what are the limits to which they can go in accepting the amendments suggested by the Upper House, one month for the second journey, was also quite enough. Therefore, as I said, there being no question of principle here but merely a question of practical politics, we thought that three months and one month were sufficient.

Now, I come to the last question, namely, what is to be the starting point of calculating the three months or the one month. I think Mr. Kunzru will forgive me for saying that he has failed to appreciate the importance of the changes made by the Drafting Committee. If this provision had not been there in Draft article 172 as it stands, I have no doubt—and the Drafting Committee had no doubt—that the powers of the Upper Chamber would have been completely negated and nullified. Let me explain that; but before I do so, let me state the possibilities of determining what I call the starting point of limitation. First of all, it would have been possible to say that the Bill must be passed by the Upper House within a stated period from the passing of the Bill by the Lower

House. Secondly, it would have been possible to say that the Upper House should pass the Bill in the stated period from the time of the reception of the Bill by that House. Now supposing we had adopted either of these two possibilities, the consequences would have been very disastrous to the Upper House. Once you remember that the summoning of the Upper House is entirely in the hands of the executive—which may summon when it likes and not summon when it does not like—it would have been quite possible for a dishonest executive to take advantage of this clause by not calling the Upper House in session at all. Or supposing we had taken the reception as the starting point, they' could have also cheated the Upper House by not putting the Bill on the agenda and not thereby giving the Upper House an opportunity to consider it. We thought that this sort of procedure was wrong ; it would result in penalising the Upper House for no fault of that House. If the House is not called certainly it cannot consider the Bill, and such a Bill could not be deemed to have been considered by the Upper House. Therefore in order to protect the Upper House the Drafting Committee rejected both these possibilities of determining the starting point, namely, the passing of the Bill and the reception of the Bill, a proposal which was embodied by them in the draft article as it stands. And they deliberately adopted the provisions contained in the new article as is now proposed, namely, when the Bill has been tabled for consideration if the Upper House does not finish its consideration within the particular time fixed by this clause, then obviously the right of the Upper House to deal with the matter goes by its own default, and no one can complain ; certainly the Upper House cannot complain. My Honorable Friend Pandit Kunzru will therefore see that rather than whittle down the rights of the Upper House the new proposal has given the Upper House rights which the executive could not take away.

Pandit Hirday Nath Kunzru: Does this childish explanation satisfy the Honorable Member himself ?

The Honorable Dr. B. R. Ambedkar: If my Honorable Friend chooses to call it childish he may do so, but I have no doubt that the new clause is a greater improvement than the clause as it stood. I am sorry if Pandit Kunzru is not satisfied, but he did not raise any point to which I have not given an explanation.

Mr. President:The question is :

" That in sub-clause (b) of clause (1) of the proposed article 172, for the words ' two months ' the words ' three months be substituted. "

The amendment was adopted.

Article 172, as proposed and amended, was added to the Constitution.

ARTICLE 176

Mr. President: Then we go to article 176.

The Honorable Dr. B. R. Ambedkar: I suggest that it would be better if we take up 83-A and dispose it of.

Mr. President: I do not think there is much in article 176. We can take up now. There is hardly any amendment....

[Now there is no amendment to this article 176. Article 176 was adopted and added to the Constitution.]

ARTICLE 83-A

Mr. President: Shall we go back now to article 83 ?

The Honorable Dr. B. R. Ambedkar: Mr. President, Sir, I move:

" That after article 83 the following new article be inserted :—(Decision on question as to disqualifications of members).

' 83-A. (1) If any question arises as to whether a member of either House of Parliament has been subject to any of the disqualifications mentioned in clause (1) of the last preceding article, the question shall be referred for the decision of the President and his decision shall be final.

(2) Before giving any decision on any such question, the President shall obtain opinion of the Election Commission and shall act according to such opinion. ' "

This article is a replica, so to say, of article 167-A which we passed the other (law which applies to similar cases in the provinces and I do not therefore think that any more explanation will be necessary.

[The New Article 83-A was adopted and added to the Constitution.]

ARTICLE 127-A

Mr. President: I think we had better take up articles 210 and 211. Thereafter we shall come to article 127-A.

Shri T. T. Krishnamachari : Either way it does not matter because if this is accepted then article 210 and 211 get automatically dropped.

The Honorable Dr. B. R. Ambedkar: Mr. President, Sir, I move:—

"That after article 127, the following new article be inserted:— (Audit reports relating to accounts of a State).

' 127-A. The reports of the Comptroller and Auditor-General of India relating to the accounts of

a State shall be submitted to the ting to accounts of Governor or Ruler of the State, who shall cause them to be laid before the Legislature of the State.

The House will remember, it has now adopted articles whereby the auditing and accounting will become one single institution, so to say, under the authority of the Comptroller and Auditor-General. It is, therefore, necessary that we should make some provision that the reports relating to the audit and accounts of a particular State shall be submitted to the Legislature by the Governor or the Ruler for its consideration and that is what this article provides for.

Mr. President: Does any one wish to say anything about this article ?

Honorable Members: No. New article 127-A was added to the Constitution

ARTICLE 197

Mr. President: Shall we take up article 212 ?

Shri T. T. Krishnamachari : Article 188 may be taken up ; it has got to be deleted.

The Honorable Dr. B. R. Ambedkar: I was suggesting that articles 188 and 278 may be taken together. It would be better if the whole thing is explained.

Mr. President: Then, we shall taken up article 197.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That for article 197, the following article be substituted :—(Salaries etc. of Judges).

197. (1) There shall be paid to the Judges of each High Court such salaries as are specified in the Second Schedule.

(2) Every Judge shall be entitled to such allowances and to such rights in respect of leave of absence and pensions as may from time to time be determined by or under law made by Parliament, and until so determined, to such allowances and rights as are specified in the Second Schedule:

Provided that neither the allowances of a Judge nor his rights in respect of leave of absence or pension shall be varied to his disadvantage after his appointment. ' "

This section corresponds to the other article which related to the Supreme Court Judges.

Mr. President: There is an amendment by Pandit Kunzru.

[Amendments 20,21 and 22 of List I (Second Week) were not moved.]

Mr. President: There is no amendment moved to this. I shall put to vote the article as moved by Dr. Ambedkar today.

The motion was adopted.

Article 197 as amended was added to the Constitution.

ARTICLE 212 to 214

Mr. President: Shall we take up article 212?

The Honorable Dr. B. R. Ambedkar: Sir, I would like articles 212 to 214 to be held over. I think article 275 may be taken up.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, article 212 to 214 are sought to be held over. I think the House would like to have an explanation as to why they are being held over.

The Honorable Dr. B. R. Ambedkar: The explanation is this : that we are having the prospect of some of the Settlements coming over to India like Chandernagore and other places. We have to make some provision for them, and this might be the appropriate place where provision for them might be made. It has been just suggested that it is felt that it might be more properly incorporated and so on, Consequently, we want some time to consider that question. Perhaps, we might be in a position to take up these articles even today.

Mr. President: Then, we may take up article 188, and in that connection, the other emergency provisions.

The Honorable Dr. B. R. Ambedkar: We might also take up article 275 which is also an emergency provision.

Mr. President: Let us take up article 275.

Mr. Naziruddin Ahmad : May I rise on a point of order, Sir ? It is very inconvenient for some members to follow the procedure which is being adopted in the House. We have in the agenda paper today some articles which are set down *seriatim*. It was understood on the last occasion that articles will be taken up in the order laid down in the Order Paper. I do not wish to raise any technical objection; but the difficulty is that Members have got to come prepared to intelligently take part in the debate. Instead of following a regular procedure even after the recess we had, the House is expected to jump from one article to another backwards and forwards. I submit this is causing some amount of inconvenience and I submit that the House should be asked to proceed in some regular order. Otherwise, there would be no intelligent debate.

Mr. President: I am inclined to agree with Mr. Naziruddin Ahmad that it is inconvenient to Members to jump from article 211 to 275.

The Honorable Dr. B. R. Ambedkar: I am prepared to take up article 212 and go on.

Mr. President: I think that is much better. If anything happens, we can provide for that later on regarding Chandernagore. Let us take up article 212.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That with reference to amendment No. 2713 of the List of Amendments, clause (2) of article 212 be omitted. "

The reason why this amendment is being moved is because all provisions with regard to the States specified in Part III are being made separately in a separate Schedule. Consequently it is unnecessary to retain clause (2) here.

I also move:

" That in clause (1) and the proviso to clause (1) of article 212, for the words ' Governor or Ruler ', wherever they occur, the expression ' Government ' be substituted. "

Mr. President: We have quite a number of amendments to this article of which notice has been given. I shall take them one by one.

[After discussion on various amendments Article 212 as amended by Dr. Ambedkar's amendment was adopted and added to the Constitution.]

ARTICLE 213

The Honorable Dr. B. R. Ambedkar: Sir I move. :

" That with reference to amendment No. 2722 of the List of Amendments, for article 213, the following article be substituted :—(Creation or continuance of local Legislatures or Council of Advisers or Ministers).

213. (1) Notwithstanding anything contained in this Constitution Parliament may by law create or continue for any State for the time being specified in Part II of the First Schedule and administered through a Chief Commissioner or Lieutenant Governor__

(a) a body, whether nominated, elected or partly nominated and partly elected, to function as a Legislature for the State ; or

(b) a council of advisers or ministers or both with such constitution, powers and functions in each case, as may be specified in the law.

(2) Any law referred to in clause (1) of this article shall not be deemed to be an amendment of this Constitution for the purposes of article 304 thereof notwithstanding that it contains any provision which amends or has the effect of amending the Constitution. "

Sir, the principal change sought to be effected by this amendment is this. In the original Draft the power of creating a body, whether nominated or elected, for purposes of representation and a Council of Advisers or Ministers was a matter which was left to the President. The new Draft gives the power to

Parliament and not to the President. That is the only substantial change which has been effected by this new article. Otherwise the provision remains the same.

The Honorable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, with regard to the amendment moved by my Friend Lala Deshbandhu Gupta, I am quite certain that this is not the place where the amendment properly come in. The amendment also raises a question of principle, namely, that it provides for a weightage in representation to certain areas. Now, the House will remember that at one stage, this question of weightage in representation was debated at considerable length and the House accepted the principle that weightage should not be allowed. However, I might say that by reason of article 67 where certain principles of representation are laid down, it might be possible that if some territories of India are unable to obtain even a single representative by reason of the rule, we will have to make some special provision. We cannot allow by reason of a mathematical rule to deprive any territory of representation in the State. In that connection, this matter may have to be considered, and I can say at this stage that when such areas are brought into existence, and the Drafting Committee is called upon to make some provisions with regard to their representation, then the whole matter might be examined and a fresh article, something after article 67, say article 67-A, might be incorporated. Beyond that, I cannot at this stage, say anything more.

Mr. President: I will put the amendment to vote now.

[Article 213, as amended by Prof. Shibban Lal Saksena's ammendment was adopted and added to the Constitution.]

ARTICLE 213-A

Mr. President: Then we go to article 213-A.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

"That after article 213, the following new article be inserted:— (High Courts for states in Part II of the First Schedule).

'213 (1) Parliament may by law constitute a High Court for a State for the time being specified in Part II of the First Scheduled or High declare any Court in any such State to be a High Court for the purposes of this Constitution.

(2) The Provisions of Chapter VII of Part VI of this Constitution shall apply in relation to every High Court referred to in clause (1) of this article as they apply in relation to a High Court referred to in article 191 of this Constitution subject to such modifications or exceptions

as Parliament may by law provide.

(3) Subject to the provisions of this Constitution and to any provisions of any law of the appropriate Legislature made by virtue of the powers conferred on that Legislature by or under this Constitution, every High Court exercising jurisdiction immediately before the commencement of this Constitution in relation to any State for the time being specified in Part II of the First Schedule or any area included therein shall continue to exercise such jurisdiction in relation to that State or area after such commencement.

(4) Nothing in this article derogates from the power of Parliament to extend or exclude the jurisdiction of a High Court in any State for the time being specified in Part I or Part III of the First Schedule to, or from, any State for the time being specified in Part II of that Schedule or any area included within that State. "

Sir, it will be remembered that when the House discussed the constitution of States in Part I, it was decided that every State should have a High Court. States in Part II are also States ; consequently the provision which applies to States in Part I, namely, that each State should have an independent High Court, must also apply to States in Part II. Unfortunately, this provision had not been made in the Draft as it stands now. Consequently it has become necessary to introduce this article 213-A in order to provide that even in States included in Part II there shall be a High Court, or if there is a High Court that High Court shall be treated as a High Court. Provision is also made in clause (8) of this article that if there is no High Court and if it is not possible to create a High Court exclusively for any particular area included in States in Part II, it will be open for Parliament to declare that a certain other Court situated in any adjacent area may be treated as a High Court for purposes of that particular area. That is the purpose of this article.

Mr. President: There is no amendment to this article. Does anyone wish to say anything on it ? Then I shall put it to vote.

The question is :

" That new article 213-A stand part of the Constitution. "

The motion was adopted.

Article 213-A, was added to the Constitution.

ARTICLE 214

Mr. President: Then we will take up amendment No. 52 standing in the name of Dr. Ambedkar.

The Honorable Dr. B. R. Ambedkar: Sir, I move.

" That with reference to amendment No. 2728 of the List of Amendments, for article 214, the following article be substituted:—

' 214. (1) Until Parliament by law otherwise provides, the constitution, powers and functions of the Coorg Legislative Council shall be the same as they were immediately before the commencement of this Constitution.

(2) The arrangements with respect to revenues collected in Coorg and expenses in respect of Coorg shall, until other provision is made in this behalf by the President by order, continue unchanged. ' "

There is noticing new in this article except that the two parts in this are separate while they were lumped together in the original article.

(Article 214, was added to the Constitution)

ARTICLE 275

Mr. President: Then we go to article 275. Amendment No. III. Dr. Ambedkar.

The Honorable Dr. B. R. Ambedkar: Sir, I move: . ' "

" That for article 275, the following article be substituted :—(Proclamation of Emergency).

' 275. (1) If the President is satisfied that a grave emergency exists whereby the security of India or of any part of the territory thereof is threatened, whether by war or external aggression or internal disturbance, he may, by Proclamation, make a declaration to that effect.

(2) A Proclamation issued under clause (1) of this article (in this Constitution referred to as ' a Proclamation of Emergency ')—

- (a) may be revoked by a subsequent Proclamation :
- (b) shall be laid before each House of Parliament;
- (c) shall cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People has been dissolved or if the dissolution of the House of the People takes place during the period of two months referred to in sub-clause (c) of this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(3) A Proclamation of Emergency declaring that the security of India or of any part of the territory thereof is threatened by war or by external aggression or by internal disturbance may

be made before the actual occurrence of war or of any such aggression or disturbance if the President is satisfied that there is imminent danger thereof. "

This article is virtually the old article 275 as it stands in the Draft Constitution. The changes which are made by this amendment are very few. The first change that is made is in clause (1). The original words were " war or domestic violence ". The present clause as amended would read as " war or external aggression, or internal disturbance. " It was thought that it was much better to use these words rather than the word " domestic violence " because it may exclude external aggression, which is not actually war, or less than war.

The second change that is introduced is in sub-clause (c) of clause (2). Originally it was provided that the Proclamation shall cease to operate at the expiration of six months. It is now proposed that it should cease to operate at the expiration of two months. Six months was felt to be too long a period.

The proviso is also a new one and it provides for a case where the Proclamation is issued when the House of the People is dissolved or the Proclamation is issued during the dissolution. The provision contained in the new proviso is that if the Proclamation is issued when the House has been dissolved, or between the dissolution of the old House and the election of the new House, then the new House may ratify it within thirty days.

The last clause is self-explanatory and it merely provides what I think is the intention of clause (1) that even though there is not the actual occurrence, if the President thinks that there is an imminent danger of it, he can act under the provisions of this article.

Shri T. T. Krishnamachari : ...Therefore, I say that most of the points that have been raised against these provisions are pointless because the powers of the Parliament are preserved and all that I wanted to convey by intervening in the debate was to say that nobody will be happy that he has to put the provision in this Constitution, but at the same time we would be failing in our duty if we do not put provisions in the Constitution which will enable those people who have the control of the destinies of the country in future times to safeguard the Constitution, so that people were in this House and elsewhere will understand that. these emergency provisions have got to be tolerated as a necessary evil, and without those provisions it is well nigh possible that all our efforts to frame a Constitution may ultimately be jeopardized and the Constitution might be in danger unless adequate powers are given to the

executive to safeguard the Constitution. Sir, I support the amendment moved by the Honorable Dr. Ambedkar.

Shri H. V. Kamath : May I tell my Honorable Friend, Mr. T. T. Krishnamachari that the point I made out with reference to article 48 of the Weimer Constitution is that Hitler used those very provisions to establish his dictatorship.

Mr. President: Dr. Ambedkar may like to speak.

The Honorable Dr. B. R. Ambedkar: I do not know ; so much time has been taken up in the' debate. If the Members who have taken part in the debate desire that I should say something, I should be glad to do so and even then it can only be done tomorrow.

Mr. President: I think that Mr. T. T. Krishnamachari has dealt with all the points that have been raised and it may not be necessary for you to reply to the points which have been raised by the Members.

Pandit Thakur Das Bhargava : We do not require any other reply.

Mr. President: I do not think it shows any disrespect to the Members who have expressed their views if you do not reply, but if you want to reply, I cannot certainly prevent you from doing so. Would you take much time to reply ?

The Honorable Dr. B. R. Ambedkar: I would take some time. I thought that no reply was necessary because Mr. T. T. Krishnamachari has replied to the points already.

Prof. Shibban Lal Saksena : Let us hear him tomorrow. In any case we want to hear him.

Mr. President: I am only thinking of the time. I do not think any reply is particularly called for. I will put the amendments to vote now.

[All the 4 amendments were negatived and the Article 2 76 as moved by Dr. Ambedkar was adopted and added to the Constitution.]

ARTICLE 276

Mr. Naziruddin Ahmad (West Bengal : Muslim) : May I point out thati 3003 is a drafting amendment ? It merely transposes a few words from one place to another.

The Honorable Dr. B. R. Ambedkar (Bombay : General) : If that is so, I agree.

(Amendments Nos. 3004 and 3005 were not moved.)

Mr. President: No. 3006 is not exactly of a drafting nature. 3006 is consequential to 3003. So, better move both.

The Honorable Dr. B. R. Ambedkar: Sir, I beg to move:

" That in article 276, the words ' notwithstanding anything contained in this Constitution ' after the word ' then ' be deleted and the words ' notwithstanding anything contained in this Constitution ' be inserted at the beginning of clause (a) of the same article. "

I also move:

" That in clause (b) of article 276, the words ' notwithstanding that it is one which is not enumerated in the Union List ' be added at the end ".

(Amendment No. 119 of Supplementary List was not moved.)

Mr. President: There is no other amendment.

Shri T. T. Krishnamachari (Madras : General) : Mr. President, Sir, I am afraid if my Friend Mr. Naziruddin Ahmad will look at section 126A of the Government of India Act, he will find why Dr. Ambedkar's amendment is necessary, because 276(b) gives executive power to the Union in times of emergency, when an emergency is declared, and these words are necessary in order to make the meaning perfectly clear. The thing has been clarified, in terms of the language used in the Government of India Act, section 126A. If he will read the section once again, he will find that there is no objection to the inclusion of these words in this article.

Mr. President: You do not wish to say anything. Dr. Ambedkar ?

The Honorable Dr. B. R. Ambedkar: No Sir. It is not necessary for me to say anything.

Mr. President: Then I will put the amendments to vote now.

[Dr. Ambedkar's amendment was adopted. Article 276, as amended was added to the Constitution.]

ARTICLES 188, 277-A, 278 AND 278-A

Mr. President: Then we come to article 277.

The Honorable Dr. B. R. Ambedkar: I would like to hold article 277 hack, for the present.

Mr. President: Shall we then take up article 277-A ? Article 277 is held back for the present and we take up article 277-A now.

The Honorable Dr. B. R. Ambedkar: Sir, I think it would be better if the three amendments were taken together, namely, amendment to drop article 188, introduction of a new article 277-A and the substitution of the old article 278 by the two new articles 278 and 278-A because they are cognate matters. They might be put separately for voting purposes. But for discussion, I think they might be taken together.

Mr. President: Articles 188, 278 and 278-A may be taken together because

they deal with cognate matters and it would be better if the discussion of all the articles is taken up together, although we may put them to vote separately.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That article 188 be deleted. "

Sir, I move:

" That after article 277, the following new article be inserted :—(Duty of the Union to protect state against external aggression and internal disturbance).

' 277-A. It shall be the duty of the Union to protect every state against external aggression and internal disturbance and to ensure that the Government of every State is carried on in accordance with the provisions of this Constitution '."

And then, Sir, I move amendment No. 160 of List II, which reads as follows:

" That for article 278, the following articles be substituted :—

278. (1) If the President, on receipt of a report from the Governor or Ruler of a State or otherwise, is satisfied that the Government of the State cannot be carried on in accordance with the provisions of this Constitution, the President may by Proclamation—

(a) assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or

Ruler, as the case may be, or any body or authority in the State other than the Legislature of the State ;

(b) declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament;

(c) make such incidental and consequential provisions as appear to the President to be necessary or desirable for giving effect to the objects of the Proclamation, including provisions for suspending in whole or in part the operation of any provisions of this Constitution relating to any body or authority in the State :

Provided that nothing in this clause shall authorise the President to assume to himself any of the powers vested in or exercisable by a High Court or to suspend in whole or in part the operation of any provisions of this Constitution relating to High Courts.

(2) Any such Proclamation may be revoked or varied by a subsequent Proclamation.

(3) Every Proclamation under this article shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament:

Provided that if any such Proclamation is issued at a time when the House of the People is dissolved or if the dissolution of the House of the People takes place during the period of two

months referred to in this clause and the Proclamation has not been approved by a resolution passed by the House of the People before the expiration of that period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

(4) A Proclamation so approved shall, unless revoked, cease to operate on the expiration of a period of six months from the date of the passing of the second of the resolutions approving the Proclamation under clause (3) of this article :

Provided that if and so often as a resolution approving the continuance in force of such a Proclamation is passed by both Houses of Parliament Proclamation shall unless revoked continue in force for a further period of six months from the date on which under this clause it would otherwise have ceased to operate, but no such Proclamation shall in any case remain in force for more than three years:

Provided further that if the dissolution of the House of the People takes place during any such period of six months and a resolution approving the continuance in force of such Proclamation has not been passed by the House of the People during the said Period, the Proclamation shall cease to operate at the expiration of thirty days from the date on which the House of the People first sits after its reconstitution unless before the expiration of that period resolutions approving the Proclamation have been passed by both Houses of Parliament.

" 278-A. (1) Where by a Proclamation issued under clause (1) of article 278 of this Constitution it has been declared that the powers of the Legislature of the State shall be exercisable *by* or under the authority of Parliament, it shall be competent—

(a) for Parliament to delegate the power to make laws for the State to the President or any other authority specified by him in that behalf •,

(b) for Parliament or for the President or other authority to whom the power to make laws is delegated under sub-clause (a) of this clause to make laws conferring powers and imposing duties or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India ;

(c) for the President to authorise when the House of the People is not in session expenditure from the Consolidated Fund of the State pending the sanction of such expenditure by Parliament:

(d) for the President to promulgate Ordinances under article 102 of this Constitution except when both Houses of Parliament are in session.

(2) Any law made by or under the authority of Parliament which Parliament or the President or other authority referred to in sub-clause (a) of clause (1) of this article would not, but for the issue of a Proclamation under article 278 of this Constitution, have been competent to make shall to the extent of the incompetency cease to have effect on (the expiration of a period of one year after the Proclamation has ceased to operate except as respects things done or omitted to be done before the expiration of the said period unless the provisions which shall so cease to have effect are sooner repeated or re-enacted with or

without modification by an Act of the Legislature of the State. "

Shri H. V. Kamath (C.P. and Berar : General) : Article 188 also ?

The Honorable Dr. B. R. Ambedkar: I have said that 188 will be deleted. It is not really necessary to move the amendment, but to give the House an idea of the whole picture I have said that we propose to delete article 188.

Sir. I anticipate that there will be probably a lull-dress debate on this article and I may at some stage be called upon to offer explanation of the points of criticism that might be raised so that I think it would be right if I did not enter upon a very exhaustive treatment of the various points that arise out of the new scheme. I propose at the outset merely to give an outline of the pattern of things which we provide by the dropping of article 188, by the addition of article 277-A and by the substitution of two new articles 278 and 278-A for the old article 278.

I think I can well begin by reminding the House that it has been agreed by the House, when we were considering general principles of the Constitution, that the Constitution should provide some machinery for the breakdown of the Constitution. In other words, some provision should be introduced in the Constitution which would be somewhat analogous to the provisions contained in section 93 of the Government of India Act, 1935. At the stage when this principle was accepted by the House, it was proposed that if the Governor of the Province feels that the machinery set up by this Constitution for the administration of the affairs of the Province breaks down, the Governor should have the power by Proclamation to take over the administration of the Province himself for a fortnight and thereafter communicate the matter to the President of the Union that the machinery has failed, that he has issued a Proclamation and taken over the administration to himself, and on the report made by the Governor under the original article 188 the President could act under article 278. That was the original scheme.

It is now felt that no useful purpose could be served, if there is a real emergency by which the President is required to act, by allowing the Governor, in the first instance, the power to suspend the Constitution merely for a fortnight. If the President is ultimately to take the responsibility of entering into the provincial field in order to sustain the constitution embodied in this Constitution, then it is much better that the President should come into the field right at the very beginning. On the basis that that is the correct approach to the situation, namely that if the responsibility is of the President then the President from the very beginning should come into the field, it is obvious that article 188 is a futility and is not required at all. That is the reason why I have proposed that article 188 be deleted.

Now I come to article 277-A. Some people might think that article 277-A is

merely a pious declaration, that it ought not to be there. The Drafting Committee has taken a different view and I would therefore like to explain why it is that the Drafting Committee feels that article 277-A ought to be there. I think it is agreed that our Constitution, notwithstanding the many provisions which are contained in it whereby the Center has been given powers to override the Provinces, none-the-less is a Federal Constitution and when we say that the Constitution is a Federal Constitution it means this, that the Provinces are as sovereign in their field which is left to them by the Constitution as the Center is in the field which is assigned to it. In other words, barring the provisions which permit the Center to override any legislation that may be passed by the Provinces, the Provinces have a plenary authority to make any law for the peace, order and good government of that Province. Now, when once the Constitution makes the provinces sovereign and gives them plenary powers to make any law for the peace, order and good government of the province, really speaking, the intervention of the Center or any other authority must be deemed to be barred, because that would be an invasion of the sovereign authority of the province. That is a fundamental proposition which, I think, we must accept by reason of the fact that we have a Federal Constitution. That being so, if the Center is to interfere in the administration of provincial affairs, as we propose to authorise the Center by virtue of articles 278 and 278-A, it must be by and under some obligation, which the Constitution imposes upon the Center. The invasion must not be an invasion which is wanton, arbitrary and unauthorised by law. Therefore, in order to make it quite clear that articles 278 and 278-A are not to be deemed as a wanton invasion by the Center upon the authority of the province, we propose to introduce article 277-A. As Members will see, article 277-A says that it shall be the duty of the Union to protect every unit, and also to maintain the Constitution. So far as such obligation is concerned, it will be found that it is not our Constitution alone which is going to create this duty and this obligation. Similar clauses appear in the American Constitution. They also occur in the Australian Constitution, where the constitution, in express terms, provides that it shall be the duty of the Central Government to protect the units or the States from external aggression or internal commotion. All that we propose to do is to add one more clause to the principle enunciated in the American and Australian Constitutions, namely, that it shall also be the duty of the Union to maintain the Constitution in the provinces as enacted by this law. there is nothing new in this and as I said, in view of the fact that we are endowing the provinces with plenary powers and making them sovereign within their own field, it is necessary to provide that if any invasion of the provincial field is done by the Center it is in virtue of this obligation. It will be

an act in fulfilment of the duty and the obligation and it cannot be treated, so far as the Constitution is concerned, as a wanton, arbitrary, unauthorised act. That is the reason why we have introduced article 277-A.

With regard to articles 278 and 278-A although they appear as two separate clauses, they are merely divisions of the original article 278. 278 has something like seven clauses. The first four clauses are embodied in the new article 278. Clause (4) onwards are put in article 278-A. The reason for making this partition, so to say, is because otherwise the whole article 278 would have been such a mouthful that probably it would have been difficult for Members to follow the various provisions contained therein. It is to break the ice, so to say, that this division has been made.

With regard to article 278, the first change that is to be noted is that the President is to act on a report from the Governor or otherwise. The original article 188 merely provided that the President should act on the report made by the Governor. The word " otherwise " was not there. Now it is felt that in view of the fact that article 277-A, which precedes article 278, imposes a duty and an obligations upon the Center, it would not be proper to restrict and confine the action of the President, which undoubtedly will be taken in fulfilment of the duty, to the report made by the Governor of the province. It may be that the Governor does not make a report. None-the-less, the facts are such that the President feels that his intervention is necessary and imminent. I think as a necessary consequence to the introduction of article 277-A, we must also give liberty to the President to act even when there is no report by the Governor and when the President has got certain facts within his knowledge on which he thinks he ought to act in the fulfilment of his duty.

The second change which article 278 makes is this : that originally the authority and powers of the legislature were exercisable only by Parliament. It is now provided that this authority may be exercisable by anybody to whom Parliament may delegate its authority. It may be too much of a burden on Parliament to take factual and *de facto* possession of legislative powers of the provincial legislatures which may be suspended because Parliament may have already so much work that it may not be possible for it to deal with the legislation necessary for the provinces whose legislature has been suspended under the Proclamation. In order, therefore, to facilitate legislation, it is now provided that Parliament may do it itself or Parliament may authorise, under certain conditions and terms and restraints, some other authority to carry on the legislation.

Another very important change that is made is that the Proclamation will cease to be in operation at the expiration of two months, unless before the expiration of that period Parliament by resolution approves its further

continuance. Originally, the provision was that it will continue in operation for six months, unless extended by Parliament. In the present draft, the period is restricted to only two months. After that, if the Proclamation is to be continued, it has to be ratified by Parliament by a Resolution.

The second change that is made is this, that in the original article, if Parliament had once ratified the Proclamation, that Proclamation could run automatically without further ratification for twelve months. That position again has been altered. The twelve months is now divided into two periods of six months each and after the first ratification, the Proclamation could run for six months and then it shall have to be ratified by Parliament again. After Parliament has ratified, it will again run for six months only. There will be further ratification by Parliament, so that six months is the period which is permitted for a Proclamation after it has been ratified by Parliament. Further continuance would require further ratification and we have put an outside limit of three years. At the end of three years, neither Parliament nor the President can continue the state of affairs in existence in the province under which this Proclamation has taken effect.

Then I come to article 278-A. Sub-clause (a) which provides for Parliament to delegate power to make laws for the State to the President or any other authority specified by him in that behalf is a new one.

Sub-clause (b) of the article is merely a consequential change, consequential upon sub-clause (a) of clause (1) of article 278-A. It says that authority may be conferred upon anybody, either upon the officers of the Government of India or officers of even Provincial Governments to carry into effect any law that may be made by Parliament or by any agency appointed by Parliament in this behalf.

Sub-clause (c) of clause (1) of article 278-A is a new clause. It provides for the sanctioning of the budget. In the original draft article 278 no provision was made as to how to sanction and prepare the Budget of a province whose legislature has been suspended. That matter is now made clear by the introduction of sub-clause (c) of clause (1) to article 278-A which expressly provides that the President may authorise, when the House of the People is not in session, expenditure from the Consolidated Fund of the State, pending the sanction of such expenditure by Parliament.

Sub-clause (d) makes it quite clear—which probably was already implicit in the article—that the President also can exercise his powers conferred upon him by article 102 to issue Ordinances with regard to the running of the administration of any particular province which has been taken over when both the Houses are not in session. The original article 102 was confined to Ordinances to be issued with regard to the Central Government. We now

make it clear by sub-clause (d) that this power will also be exercised by the President with regard to any Ordinance that may be necessary to be passed for the conduct of the administration of a province which has been taken up.

Mr. President: I find that there are many other speakers and the House has already taken five hours over this debate. I think we should now close the discussion and I do not think that any fresh arguments will be advanced. If Honorable Members have not made up their minds after hearing the arguments so far advanced, they are not likely to do so after hearing a few more speeches. I would like to know whether the House would like to close the discussion.

Several Honorable Members : The question be put, the question be put.

Mr. President: Dr. Ambedkar.

The Honorable Dr. B. R. Ambedkar (Bombay : General) : Sir, although these articles have given rise to a debate which has lasted for nearly five hours, I do not think that there is anything which has emerged from this debate which requires me to modify my attitude towards the principles that are embodied in these articles. I will therefore not detain the House much longer with a detailed reply of any kind.

I would first of all like to touch for a minute on the amendment suggested by my Friend Mr. Kamath in article 277-A. His amendment was that the word " and " should be substituted by the word "or". I do not think that that is necessary because the word " and " in the context in which it is placed is both conjunctive as well as disjunctive, which can be read in both ways, " and " or " or ", as the occasion may require. I, therefore, do not think that it is necessary for me to accept that amendment, although I appreciate his intention in making the amendment.

The second amendment to which I should like to refer is that moved by my Friend Prof. Saksena, in which he has proposed that one of the things which the President may do under the Proclamation is to dissolve the legislature. I think that is his amendment in substance. I entirely agree that that is one of the things which should be provided for, because the people of the province ought to be given an opportunity to set matters right by reference to the legislature. But I find that that is already covered by sub-clause (a) of clause (1) of article 278 because sub-clause (a) proposes that the President may assume to himself the powers exercisable by the Governor or the ruler. One of the powers which is vested and which is exercisable by the Governor is to dissolve the House. Consequently, when the President issues a Proclamation and assumes these powers under sub-clause (a), that power of dissolving the

legislature and holding a new election will be automatically transferred to the President—which powers no doubt the President will exercise on the advice of his Ministers. Consequently my submission is that the proposition enunciated by my Friend Prof. Saksena is already covered by sub-clause (a), it is implicit in it and there is therefore no necessity for making any express provision of that character.

Now I come to the remarks made by my Friend Pandit Kunzru. The first point, if I remember correctly, which was raised by him was that the power to take over the administration when the constitutional machinery fails is a new thing which is not to be found in any constitution. I beg to differ from him and I would like to draw his attention to the article contained in the American Constitution where the duty of the United States is definitely expressed to be to maintain the Republican form of the Constitution. When we say that the Constitution must be maintained in accordance with the provisions contained in this Constitution we practically mean what the American Constitution means, namely that the form of the constitution prescribed in this Constitution must be maintained. Therefore, so far as that point is concerned we do not think that the Drafting Committee has made any departure from an established principle.

The other point of criticism was that articles 278 and 278-A were unnecessary of view of the fact that there are already in the Constitution articles 275 and 276. With all respect I must submit that he (Pandit Kunzru) has altogether misunderstood the purposes and intentions which underlie article 275 and the present article 278. His argument was that after all what you want is the right to legislate on provincial subjects. That right you get by the terms of article 276, because under that article the Center gets the power, once the Proclamation is issued, to legislate on all subjects mentioned in List II. I think that is a very limited understanding of the provisions contained either in article 275 and 276 or in articles 278 and 278-A.

I should like first of all to draw the attention of the House to the fact that the occasions on which the two sets of articles will come into operation are quite different. Article 275 limits the intervention of the Center to a state of affairs when there is war or aggression, internal or external. Article 278 refers to the failure of the machinery by reasons other than war or aggression. Consequently the operative clauses, as I said, are quite different. For instance, when a proclamation of war has been issued under article 275, you get no authority to suspend the provincial constitution. The provincial constitution would continue in operation. The legislature will continue to function and possess the powers which the constitution gives it; the executive will retain its executive power and continue to administer the province in

accordance with the law of the province. All that happens under article 276 is that the Center also gets concurrent power of legislation and concurrent power of administration. That is what happens under article 276. But when article 278 comes into operation, the situation would be totally different. There will be no legislature in the province, because the legislature would have been suspended. There will be practically no executive authority in the province unless any is left by the proclamation by the President or by Parliament or by the Governor. The two situations are quite different. I think it is essential that we ought to keep the demarcation which we have made by component word's of article 275 and article 278. I think mixing the two things up would cause a great deal of confusion.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I ask my Honorable Friend to make one point clear ? Is it the purpose of articles 278 and 278-A to enable the Central Government to intervene in provincial affairs for the sake of good government of the provinces ?

The Honorable Dr. B. R. Ambedkar: No, no. The Center is not given that authority.

Pandit Hirday Nath Kunzru : Or only when there is such mis-government in the province as to endanger the public peace ?

The Honorable Dr. B. R. Ambedkar: Only when the government is not carried on in consonance with the provisions laid down for the constitutional government of the provinces. Whether there is good government or not in the province is for the Center to determine. I am quite clear on the point.

Pandit Hirday Nath Kunzru : What is the meaning exactly of " the provisions of the Constitution " taken as a whole ? The House is entitled to know from the Honorable Member what is his idea of the meaning of the phrase- ' in accordance with the provisions of the Constitution '.

The Honorable Dr. B. R. Ambedkar: It would take me very long now to get into a detailed examination of the whole thing and, referring to each article, say, this is the principle which is established in it and say, if any Government or any legislature of a province does not act in accordance with it, that would act as a failure of machinery. The expression " failure of machinery ", I find has been used in the Government of India Act, 1935. Everybody must be quite familiar therefore with its *defacto* and *dejure* meaning. I do not think any further explanation is necessary.

Shri H. V. Kamath (C. P. & Berar : General) : What about the other amendments moved by Professor Saksena and myself? Is not Dr. Ambedkar replying to them ?

The Honorable Dr. B. R. Ambedkar: I do not accept them. I was only replying or referring to those amendments which I thought had any substance

in them. I cannot go on discussing every amendment moved.

Shri H. V. Kamath : Dr. Ambedkar is answering only verbal amendments moved. Should he not reply to all the amendments moved ?

Mr. President: I cannot force Dr. Ambedkar to reply in any particular way. He is entitled to give his reply in his own way.

The Honorable Dr. B. R. Ambedkar: In regard to the general debate which has taken place in which it has been suggested that these articles are liable to be abused, I may say that I do not altogether deny that there is a possibility of these articles being abused or employed for political purposes. But that objection applies to every part of the Constitution which gives power to the Center to override the Provinces. In fact I share the sentiments expressed by my Honorable Friend Mr. Gupte yesterday that the proper thing we ought to expect is that such articles will never be called into operation and that they would remain a dead letter. If at all they are brought into operation, I hope the President, who is endowed with these powers, will take proper precautions before actually suspending the administration of the provinces. I hope the first thing he will do would be to issue a mere warning to a province that has erred, that things were not happening in the way in which they were intended to happen in the Constitution. If that warning fails, the second thing for him to do will be to order an election allowing the people of the province to settle matters by themselves. It is only when these two remedies fail that he would resort to this article. It is only in those circumstances he would resort to this article. I do not think we could then say that these articles were imported in vain or that the President had acted wantonly.

Shri H. V. Kanath : Is Dr. Ambedkar in a position to assure the House that article 143 will now be suitably amended ?

The Honorable Dr. B. R. Ambedkar: I have said so and I say now that when the Drafting Committee meets after the Second Reading, it will look into the provisions as a whole and article 143 will be suitably amended if necessary.

Mr. President: I will now put the amendment to vote one after another.

The question is:

" The article 188 be deleted. "

The motion was adopted.

Article 188 was deleted from the Constitution.

ARTICLE 279

The Honorable Dr. B. R. Ambedkar: Mr. President, I think there are only two points which have been raised which require a reply. The amendment which has been moved by my Friend Professor Saksena was to the effect

that any change in the Fundamental Right should be made by Parliament and not by the State during emergency. Now if my friend were to refer to the provisions of article 13, he himself will find that we have permitted both the Center and the Provinces to make any changes which may affect the Fundamental Rights provided the changes made by them are reasonable. Therefore under normal circumstances, the authority to make laws affecting Fundamental rights is vested in both and there is no reason why, for instance, this normal right which the State possesses should be taken away during emergency.

Prof. Shibban Lal Saksena : But they will be suspended during emergency.

The Honorable Dr. B. R. Ambedkar: Suspension comes in another article. This article merely says that power may be exercised by the State—meaning both Parliament as well as the provinces—notwithstanding whatever is said in article 13.

Prof. Shibban Lal Saksena : During emergency ?

The Honorable Dr. B. R. Ambedkar: Yes. Because that is anormal power even in other cases. When there is no emergency both have got power to legislate on the subject. I see therefore no reason why that power should be taken away during emergency. On the other hand I should have thought that emergency was one of the reasons why such a power should be given to the State.

Then with regard to my Friend Mr. Kamath's criticism that the next article 280, was enough for the purpose, I think that is a misunderstanding of the whole situation, because unless power is given to modify, the suspension has no consequence at all. Therefore article 280 deals with quite a separate matter and has nothing to do with this article. This article should be accepted in the form in which it is proposed.

Mr. President: I will put the amendments to vote.

[3 amendments were negatived. Article 279 was added to the Constitution.]

ARTICLE 280

Mr. President: Then we take up article 280. Amendment No. 3028—Dr. Ambedkar.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That for the existing article 280, the following article be substituted :—

' 280. Where a Proclamation of Emergency is in operation, the President may by order declare that the right to move any court for the enforcement of the rights conferred by Part III of this Constitution and all proceedings pending in any court for the enforcement of any right

so conferred shall remain suspended for the period during which the Proclamation is in operation or for such shorter period as may be specified in the order. ' "

The House will see that this article 280 is really an improvement on the original article 280. The original article 280 provided that the order of the President suspending the operation of article 25 should continue for a period of six months after the proclamation has ceased to be in operation. That is to say, that the guarantee such as *habeas corpus*, writs and so on, would continue to be suspended even though the necessity for suspension had expired. It has been felt that there is no reason why this suspension of the guarantee should continue beyond the necessities of the case. In fact the situation may so improve that the guarantees may become operative even though the Proclamation has not ceased to be in operation. In order, therefore, to permit that the suspension order shall not continue beyond the Proclamation, and may even come to an end much before the time the Proclamation has ceased to be in force, this new draft has been presented to this Assembly, and I hope the Assembly will have no difficulty in accepting this.

The Honorable Dr. B. R. Ambedkar: May I say a word ? In view of the point that has been made as to whether the suspension of the proceedings should take place by the order of the President which of course means on the advice of the Executive, which of course also means that the Executive has the confidence of the Legislature, there is no doubt a difference of opinion as to whether suspension should take place by an act of the Executive or by law made by Parliament. I should like therefore that this article may be held over to provide the Drafting Committee opportunity to consider the matter. We might take up the other articles.

Mr. President: This article may be held over.

Then we shall go to article 247.

ARTICLE 247

The Honorable Dr. B. R. Ambedkar: Sir, I move that—

" That for the heading to the articles commencing with article 247, the following heading be substituted :—

' General ' "

Mr. President: I do not suppose any discussion of that is required.

The question is :

" That for the heading to the articles commencing with article 247, the following heading be substituted :—

' General ' "

The motion was adopted.

Mr. President: Does anyone wish to speak ?

The Honorable Dr. B. R. Ambedkar: All that I need say is that those words are included by way of ' abundant caution '. It may be they may be unnecessary, but it may be they may be found necessary. We want to retain those words.

Article 247 was added to the Constitution.

ARTICLE 248

Mr. President: Then we take up article 248.

The Honorable Dr. B. R. Ambedkar: Sir, I move:

" That for article 248, the following articles be substituted :—(Taxes not to be imposed save by authority of Law).

"248. No tax shall be levied or collected except by authority of law.

(Consolidated Fund)

' 248-A. (1) Subject to the provisions of this Chapter with respect to the assignment of the whole or part of the net proceeds of certain *taxes* and duties to States, all revenues or public moneys raised or received by the Government of India shall form one Consolidated Fund to be entitled " the Consolidated Fund of India ", and all revenues or public moneys raised or received by the Government of a State shall form one Consolidated Fund to be entitled " the Consolidated Fund of the State ".

(2) No moneys out of the Consolidated Fund of India or of a State shall be appropriated except in accordance with law and for the purposes and in the manner provided in this Constitution. "

These amendments are only consequential to what we have already accepted previously.

[The Article as amended by the above amendment was adopted and added to the Constitution.]

ARTICLE 249

Mr. President: Any one else who wishes to speak ? (No Member rose.)

Dr. Ambedkar, do you wish to say anything ?

The Honorable Dr. B. R. Ambedkar (Bombay : General) : There is nothing to be said.

Mr. President: I shall now put the amendments to vote.

The question is :

" That in clause (2) of article 249, the words ' in that year ' be deleted. "

The amendment was adopted.

Mr. President: The question is :

" That in clause (1) of article 249, after the words ' such stamp duties ' the words ' as are imposed under any law made by Parliament ' be inserted. "

The amendment was adopted.

Mr. President: The question is :

" That in clause (2) of article 249, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted. "

The amendment was adopted.

Mr. President: The question is :

" That article 249, as amended, stand part of the Constitution. "

The motion was adopted.

(Article 249 as amended, was added to the Constitution.)

ARTICLE 250

Mr. President: The motion is :

" That article 250, form part of the Constitution. "

(Amendments Nos. 2842 to 2850 were not moved.)

Shri R. K. Sidhva (C. P. & Berar : General) : Mr. President, I move : , -

"That at the end of article 250, the following he added:

' The net proceeds of said distribution shall be assigned by the States to the local authorities in the jurisdiction ' . "

[Mr. Sidhwa moved another amendment which was followed by his speech.]

The Honorable Dr. B. R. Ambedkar: I am very sorry, Sir. I should have requested you at the very outset to allow this article to stand over.

Mr. President: It is suggested that this article be held over.

ARTICLE 251

The Honorable Dr. B. R. Ambedkar: Sir, I beg to move:

" That in clause (2) of article 251. for the words ' revenues of India ' the words ' Consolidated Fund of India ' he substituted. "

The Honorable Dr. B. R. Ambedkar: Sir, I can explain the thing now. Before I do that, I will take up the other amendments.

There is an amendment by Mr. Barman and there is another amendment by Prof. Saksena. I am sorry to say that I cannot accept either of the amendments.

This question whether the percentage of revenue collected by way of Income-tax should be prescribed in the Constitution itself either as sixty per cent, or any other percentage or should be left to the President to decide is a matter over which considerable thought has been bestowed both by the Central Government as well as by the provincial Governments in the Conference which took place the other day to discuss this matter. It was agreed that the best thing would be to leave the matter to be prescribed by the President and that no proportion should be fixed in the Constitution itself.

With regard to the other question raised by Prof. Sakesna, that instead of the word " prescribed ", the wording should be " prescribed by Parliament ", again I am sorry to say that I cannot accept the amendment. Our schemes is to allow the President to prescribe the proportion in the first instance by himself and in the second instance after a consideration of the recommendations of the Finance Commission. We do not propose to bring the Parliament in. Because, in that case, there would be a great deal of wrangle between the representatives of the different provinces and great injustice may be done by reason of the fact that certain provinces may have a very large majority in the Parliament and certain other provinces may have a small representation. Consequently, to leave the matter to Parliament practically means leaving it to the voice of those provinces who happen to have a larger representation at the Center, and that I think would cut at the root of the justice which you want to be done to the various provinces.

Now, Sir, coming to the difficulty that you have raised, the words " States

within which that tax is leviable in that year " are necessary. They occur in the Government of India Act, 1935. The reason why these words were then introduced was because Income-tax was not to be levied in the Indian States which were to come within the Indian Union. In lieu of the Income-tax, the Indian States were required to make certain contributions, therefore, if the tax was not to be levied in that State, that State would not be entitled to obtain a share. We do not know what is going to be the procedure under the present Constitution. This matter is being examined by a Committee which has been appointed to investigate into the finances of the Indian States. If the recommendation of that Committee is that Income-tax should be leviable in all the States whether they originally constituted Indian Provinces or Indian States, then naturally these words would have to be altered. While moving this article, I retain liberty to the Drafting Committee to suggest to some amendment in that respect when the report of that Committee comes before us. That is the reason why these words are here.

Mr. President: Just one thing more. May I take it that it is not intended to cover cases within what used to be British India ?

The Honorable Dr. B. R. Ambedkar: No, no ; States in Part III. Shri B. Das : Dr. Ambedkar has referred to decisions of a Conference of Prime-Ministers of Provinces and the Drafting Committee. This House has no knowledge of what passed between them and what the result of their discussions is. Unless a Minute of those discussions is laid on the table of the House in the form of a note or otherwise, we are not in a position to come to any conclusion as to the action of the Drafting Committee.

Mr. President : I take it, if there had been any question raised by any of the Premiers of the Provinces, they would be here to raise them if they did not agree with the draft. Therefore I take the draft as now placed before the House has the concurrence or the consent of the Premiers.

Shri B. Das : The House is not bound by what the Premiers and Finance Ministers did outside this House. If any decision was taken, it is the privilege and prerogative of this House to have copies of those documents.

Mr. President: No one is bound here by any decision taken by the Premiers and the Drafting Committee. The House is free to cast its vote in any way it likes.

Pandit Lakshmi Kanta Maitra : I would like to ask for clarification from Dr. Ambedkar on one point. The point is this. This article provides that the revenue shall be distributed among the States in such a manner and from such time as may be prescribed. ... Will the interim allocation be decided on the recommendations of the Finance Committee ? It is not clear as to what is going to happen with regard to the period immediately following the coming

into operation of the Constitution, and before the appointment of the Commission envisaged in a subsequent period.

The Honorable Dr. B. R. Ambedkar: Sir, the explanation is very simple. If we wanted that there should be no interim enquiry before the President made an order of allocation, we would have merely said that such allocation as existed before the commencement of the Constitution shall continue until they are re-determined by the President on the recommendation of the Commission. We have not said that, and we have not said that deliberately, because we want that an enquiry should be made and on the basis of the enquiry the President may prescribe by order. That is the reason for the difference in language.

Pandit Lakshmi Kanta Maitra : That is to say, the interim Commission will be appointed straightaway now and on the recommendation of that Commission the President will prescribe by order ?

The Honorable Dr. B. R. Ambedkar: Yes. Otherwise we would have merely said that the existing allocation will continue until the President issued the new order.

Mr. President: I will now put the various amendments to vote. I will first put amendment No. 2858, moved by Shri Upendra Nath Barman.

Shri Upendra Nath Barman : Sir, in view of the statement of Dr. B. R. Ambedkar, I wish to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. President: Then I put amendment No. 76, moved by Dr. Ambedkar. That is a verbal amendment.

The question is:

" That in clause (2) of article 251, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted. "

The amendment was adopted.

Mr. President: Then there is the amendment of Shri T. T. Krishnamachari.

The question is:

" That in sub-clause (c) of clause (4) of article 251, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted. "

The amendment was adopted.

[Prof. Saksena's amendment was negatived.]

Article 251, as amended, was added to the Constitution.

ARTICLE 253

Mr. President: Then we take up article 253.

(Amendments Nos. 2883 and 2884 were not moved.)

Mr. President: What about amendment No. 2885 ? Do you wish to move it. Dr. Ambedkar ?

The Honorable Dr. B. R. Ambedkar: No ; Mr. Tyagi will move his amendment.

(Amendments Nos. 2886 to 2896 were not moved.)

Mr. President: Do you move your amendment No. 2897, Mr. Bardoloi ?

The Honorable Shri Gopinath Bardoloi (Assam : General) : I do not want to move the amendment, but I would like to speak on the article.

(Amendments Nos. 2898 to 2902 were not moved.)

Shri Mahavir Tyagi (United Provinces : General) : Sir, I had an amendment.

Mr. President: I have not finished all the amendments. I am taking them in order and will come to your amendment later. Amendment No. 81.

The Honorable Dr. B. R. Ambedkar: Sir I move:

" That in clause (2) of article 253, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted. "

Mr. President: Then amendment No. 214, in the name of Shri Mahavir Tyagi.

Shri Mahavir Tyagi : Sir, I move:

" That with reference to amendment No. 2886 of the List of Amendments, clause (1) of article 253 be deleted. "

Mr. President: Dr. Ambedkar, do you wish to say anything ?

The Honorable Dr. B. R. Ambedkar: Sir, I am prepared to accept the amendment moved by Mr. Tyagi, and I think it is necessary that I should offer some explanation on behalf of the Drafting Committee as to why it has proposed to accept this amendment.

Before I begin with the main points, which justify the acceptance of the amendment. I should like to meet the point of criticism which has been levelled against the Drafting Committee by my Friend Professor Saksena.

Professor Saksena said that it was not proper for the Drafting Committee to have originally put clause (1) in the article and now be ready to accept the amendment moved by Mr. Tyagi. I should like to state that clause (1) which the Drafting Committee put, does not have its origin in the deliberations of the Drafting Committee itself. That clause was suggested, if I remember correctly,

in the report of the Union Powers Committee where a decision was taken that there should be no imposition of any salt duty. As the Drafting Committee was bound by the directions and the principles contained in the report of the Union Powers Committee, they had no option except to incorporate that suggestion in the article which deals with this matter. Therefore, there is really no question of vacillation, so to say, on the part of the Drafting Committee.

I now come to the practical difficulties that are likely to arise if that clause was retained. It will be recalled that in List I, we have two entries, entry 86 which permits the levy of excise by the Central Government, we have also entry 85 which permits the levy of a duty of customs. Now, if sub-clause (1) of article 253 remained as part of the Constitution, it is obvious that the Central Government would not be entitled to employ either entry 86 or entry 85 for the purpose of levying an excise or custom *on* salt. That is quite clear, because clause (1) takes away legislative power with respect to salt duty which was otherwise levied by entry 86, or entry 85. Now, it was represented that while the non-employment of the powers given under entry 86 to levy excise may not cause much difficulty to the country, the embargo, if I may say so, on the utilisation of the powers given under entry 85 to levy a customs duty may cause a great deal of difficulty, because that would permit the importation of foreign salt to be brought into India without the Government of India being in a position to apply any kind of legislative remedy to stop such influx of salt which may practically destroy the Indian salt industry. It was, therefore, felt that the better thing would be to remove the embargo and to leave the matter to the future Parliament, to act in accordance with circumstances that might arise at any particular moment. That is the reason why the Drafting Committee is prepared to accept the amendment of my Friend Mr. Tyagi.

Shri R. K. Sidhva : May I know why the item of prohibition was entered in the directive policy ? If clause (1) of this article is to be deleted, may I know why the item regarding prohibition was inserted in the Directive Principles of the Government, and may I also know why the wearing of Kirpans was also put in the Fundamental Rights ?

The Honorable Dr. B. R. Ambedkar: Oh, Kirpans stand on quite a different footing.

Several Honorable Members : No speeches now.

Mr. President: Let there be no speeches. If the Members so desire, I may allow the article to be held over for further consideration.

The Honorable Shri K. Santhanam : The article may be held over.

The Honorable Dr. B. R. Ambedkar: The article may be held over.

Shri Mahavir Tyagi : The article may be held over.

Mr. President: This article will stand over.

ARTICLE 253 (Contd.)

Mr. President: We shall take up consideration of article 254, to begin with.

The Honorable Dr. B. R. Ambedkar (Bombay : General) : Sir, before we begin discussion of article 254, I would request you to allow consideration of Mr. Tyagi's amendment to article 253, because the Prime Minister wishes to speak on it. Although the debate is closed, I would request you to allow the Prime Minister to make a speech, before you put the amendment to vote.

Mr. President: Yes. Honorable Pandit Jawaharlal Nehru.

[Article 253, as amended, by Dr. Ambedkar's amendment was added to the Constitution]

ARTICLE 254

The Honorable Dr. B. R. Ambedkar: Mr. President, Sir, I move :

" That for article 254, the following be substituted :—(Grants in lieu of export duty on Jute and Jute products).

254. (1) There shall be charged on the Consolidated Fund of India in each year as grants-in-aid of the revenues of the States of Bengal, Bihar, Assam and Orissa in lieu of assignment of any share of the net proceeds in each year of export duty on jute and jute-products to these States such sums as may be prescribed by the President.

(2) The sums so prescribed shall continue to be charged on the Consolidated Fund of India so long as export duty on jute or jute-products continues to be levied by the Government of India or until the expiration of ten years, whichever is earlier.

(3) In this article, the expression ' prescribed ' has the same meaning as in article 251 of this Constitution. "

Sir, this amendment makes an important change in the existing system of sharing the export duty on jute and jute-products. Under the Government of

India Act, it was provided that certain provinces which are mentioned in this article should be entitled to a certain share in the proceeds of the export duty on jute and jute-products for the reason the jute forms a very important commodity in the economy of the provinces mentioned in this article. The proposal in the amended article is to do away with this right of certain provinces to claim a share in the export duty on jute and jute-products. The reason, if I may say so, is a very simple one. Ordinarily all export and import duties belong to the Central Government and no province has any right to a share in the export duty levied on any particular commodity which, as I said, happens to form an important commodity in the economy of that particular province. In view of the fact, however, that the finances of Bengal, particularly, could not be balanced without a share in the export duty, an exception was made in the Government of India Act, 1935, whereby the Bengal Government and the other Governments were given vested rights, so to say, to claim a share in the export duty which, as I said, was contrary to the general principle that the export and import duties belong to the Central Government. It is now felt that this exception which was made in the Government of India Act, 1935, should not be allowed to be continued hereafter. The reason why it is felt that this vicious principle should be stopped right now is that it is perfectly possible to imagine that other provinces also who have certain commodities grown in their area and exported outside on which the Government of India collects an export duty may also lay claim to a share in the export duty on those products. If that tendency develops it would be a very difficult position for the Government of India. Consequently it has been decided that that principle should now definitely be abrogated.' But it is equally clear that if that principle of sharing in the export duty was withdrawn suddenly it might create a difficulty in balancing the budgets of the several provinces which were up to now dependent upon a share in the export duty. Therefore a provision is made that instead of giving specifically a share in the export duty an equivalent sum or such other amount as the President might determine may be made over or assigned to those provinces for the period the export duty continues to be levied or until the expiration of ten years, whichever is earlier. The latter is introduced in order to enable those provinces to get sufficient time to develop their resources so that after the period mentioned in this article they would be in a position to balance their budgets.

I hope, Sir, the salutary principle which is now embodied in this amended article 254 will be acceptable to the House.

The Honorable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, in my reply to the debate, I do not propose to go over the many tales of woe that have been sung in this House by Members from different provinces who feel that they have been badly treated in the distribution of revenues that has been ordered under the Government of India Act, 1935. I just propose to take the few more concrete points to reply to.

First of All, I propose to say a word with regard to the amendment moved by my Friend, Professor Shibban Lal Saksena. He wants that the grants, instead of being fixed by the President, should be fixed by Parliament. Now, in the course of the debate on other financial articles that took place last time, I said that it was not the intention to bring Parliament in the matter of the distribution, because we do not want that the distribution of revenue should become a subject matter either of log-rolling between different provinces or wrangling between the representatives of different provinces. We want this matter to be decided by the President or by the President on the advice of the Finance Commission. That is the reason why I am not prepared to accept Professor Saksena's amendment.

Then I come to the-point raised by my Friend, Mr. Maitra. His first argument was that he saw no reason why the Drafting Committee should now bring forth an amendment so as to change the original article. I am sure he forgot to refer to the recommendations of the Expert Committee on Finance. If he will refer to that, I think that he will agree with me that it was the Expert Committee who recommended that the system of allocation of the jute duty and the duty on jute-products should be altered. It was therefore not a matter of any volition or wish on the part of the Drafting Committee to effect a change in the original article.

Pandit Lakshmi Kanta Maitra: They referred to compensation also.

The Honorable Dr. B. R. Ambedkar: I will come to that. The only thing which the Drafting Committee did not accept was the allocation suggested by the Expert Committee on Finance, to be given to the different provinces which would be losing their share in the export duty on jute. It was felt by the Drafting Committee that probably the figures suggested by the Expert Committee required further examination. Having regard to the very short time that was at the disposal of the Expert Committee the Drafting Committee did not feel sure that the figures suggested by the Expert Committee could be accepted by them without further examination. It was because of that fear that the Drafting Committee, instead of adopting the figures suggested by the Expert Committee, adopted their own formula which now finds a place in the new article, *viz.* that the grants-in-aid in lieu of compensation for the loss of the jute duty shall be prescribed by the President. There is therefore, no

desire on the part of the Drafting Committee either to take away a legitimate source of revenue from the four provinces which have been mentioned in this particular article, in which, so to say, they have a vested right, nor has the Drafting Committee attempted to make any fundamental alterations in the figures suggested by the Expert Committee. All that they have done is to leave the matter to the President.

Now, my Friend, Pandit Hirday Nath Kunzru, pointed out that the Drafting Committee was wrong in inserting a definition of the word " prescribe " in the article now before the House. He went further to say that even in the last article which we passed, which is 260, the word " prescribed " ought not to be there. Now, it seems to me somewhat difficult, whatever may be the merits of the proposition that he has urged, to avoid the definition of the word " prescribed. " We have said in the main part of article 254 that the grants-in-aid shall be such as may be prescribed. Now, any lawyer would want to know what the word " prescribed " means. Either we would have to have a special definition of the word " prescribed " which would be confined to or circumscribed by the provisions of article 254 or we would have to alter the provisions contained in article 260 where the word " prescribed " has been defined.

Mr. President: Probably you refer to 251.

The Honorable Dr. B. R. Ambedkar: I am sorry. I stand corrected. It is 251. It seems to me that so far as prescription of allocation is concerned, the Drafting Committee has suggested two different definitions of the word " prescribed ". One definition of " prescribed " means prescribed by the President when there is no report before him of the Finance Commission and the second definition of " prescribed " is prescribed when the President has got before him the recommendations of the Finance Commission. The reason why the Drafting Committee has been required to give two different definitions of interpretations of the word " prescribed " is this. It is quite clear that the Provinces want that the existing allocation not merely of the jute duty but the allocation of other sources of revenue provided under other articles of the Constitution must not be the same as are now existing, because their complaint is that the amounts now given to them are neither adequate nor just and that some revision of the allocation is necessary. Obviously, if the allocation is to take place immediately so that the new allocation would commence on the commencement of the Constitution, it is obvious that such allocation can be made only by the President without waiting for the recommendations of the Finance Commission because it is inconceivable that no matter what amount of hurry the Central Government was prepared for, it will not be possible to appoint a Commission to have its report, before the

Constitution commences. Consequently, we had to devise this double definition of the word "prescribed". In the first place the prescription will be by the President without the recommendation of the Finance Commission. That, of course, does not mean that the President will act arbitrarily. That does not mean that the President would act merely on the advice of his Cabinet, which might be interested in safeguarding and securing the position of the Center *vis-a-vis* the Provinces. It is, I think, in the contemplation of the Central Government and I should like to make that matter quite clear that the Central Government does propose to appoint some Committee, which will be an Expert Committee or some expert officer, which would of course not be a Commission within the meaning of this Constitution, for going into the question and finding out whether the existing allocation, not merely of the jute duty and duty on jute-products, but other allocations of other sources of revenue require to be so revised as to do justice between province and province and between the Center and the provinces. Consequently, when the first order of the President would be issued, it would not be issued, as I said, arbitrarily by the President or merely on the advice of the Executive at the Center, but he would have some independent, some expert opinion by which he would be guided. After that when the further question arises of revising the orders, the question that will arise is this, whether the President should act on the advice of Parliament or whether he should act on his own advice or whether he should act on the advice and recommendation of the Finance Commission which is to be appointed under the Constitution. As I said, there are three different alternatives which we could adopt. I know my Honorable Friend, Pandit Kunzru with the best of motives, suggests that the President should act independently and not be guided by the recommendations of the Finance Commission. There is a section of opinion represented by my Honorable Friend, Professor Saksena, that no allocation should be made by the President even upon the recommendation of the Finance Commission unless Parliament gives sanction to it. As I have said there are defects in both these positions. I do not think that it is right for the President, after having appointed a Commission to recommend the allocation, that he should altogether disregard the recommendations of that Commission, pursue his own point of view and make the allocation. That I think would be showing disrespect to the Commission. As I have said, the third alternative of leaving the matter to Parliament seems to me to be full of danger, involving provincial controversies, and provincial jealousies. Therefore, the Drafting Committee has adopted, if I may say so, the middle way, namely, that although the matter may be debated in Parliament, in the action taken by the President, he should be guided by the recommendations made by the Fiscal Commission

and should not act arbitrarily. I hope the House will accept this. This is the most reasonable compromise of the three methods and it is the best way of dealing with this matter.

[The amendment of Dr. Ambedkar as mentioned earlier was adopted.]

Article 254- was added to the Constitution.

NEW ARTICLE 254-A

Mr. President: Then we shall take up 254-A.

Mr. Naziruddin Ahmad : I have a point of order. Sir, the point of order is that amendment No. 82 seeking to introduce a new article 254-A is entirely a new matter. We have already decided in the House that amendments to the Constitution should be presented by a certain date. We have presented our amendments. No further amendments to the Constitution could be allowed according to the rules. The only amendments which are admissible today would be amendments to the original amendments as well as amendments to regular amendments. I submit that the present amendment is not related to any amendment at all... It says that "after article 254 the following article be substituted ". There is here no attempt or even a pretence of it being with reference to or related to or being in connection with any amendment. I submit. Sir, that this article cannot be inserted in this way.

The Honorable Dr. B. R. Ambedkar: No doubt the point raised by my Honorable Friend is quite valid, but I submit that you have infinite discretion in this matter to allow any amendment if it is an amendment of importance.

Mr. President: I think on previous occasions also we have allowed new articles to be inserted and this is a new article which is sought to be inserted after article 254.

Shri T. T. Krishnamachari : When you have allowed the Drafting Committee to function, it will be its duty continually to examine the Draft Constitution and if they find that there is a lacuna, because of the fact that the Committee is in existence, it has got to take steps to fill in this lacuna. The present amendment arises out of that necessity.

Mr. President: On previous occasions I have allowed fresh articles to be introduced, and this is a new article which is sought to be introduced after article 254 and so I allow this.

Dr. Ambedkar, you may move the amendment.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That after article 254 the following article be inserted :— (Prior recommendation of

President required to Bills affecting taxation in which States are interested).

254-A. (1) No Bill or amendment which imposes or varies any tax or duty in which States are interested, or which varies the meaning of the expression ' agricultural income ' as defined for the purpose of the enactments relating to the *Indian Income-tax or which* affects the Principles on which under any of foregoing provisions of this Chapter moneys are or may be distributable to States, or which imposes any such, surcharge for the purposes of the Union as is mentioned in the foregoing provisions of this Chapter, shall be introduced or moved in either House of Parliament except on the recommendation of the President.

(2) In this article the expression ' tax or duty in which States are interested ' means—

(a) a tax or duty the whole or part of the net proceeds whereof are assigned to any State ;
or

(b) a tax or duty by reference to the net proceeds whereof sums are for the time being payable out of the Consolidated Fund of India to any State. "

Sir, I might mention one or two reasons why we felt that at the fag end, so to say, this new article be inserted in the Constitution. A similar provision exists in the Government of India Act. The Drafting Committee considered the matter. They did not think it necessary to incorporate and transfer that article into the new Constitution. However, when a Conference of Premiers was held, it was suggested that such an article would be useful and perhaps necessary, because, once an allocation has been made by Parliament between the provinces and the States, such an allocation should not be liable to be disturbed by any attempt made by any private member to bring in a Bill to make alteration in matters in which the provinces become interested by reason of the allocation. It is because of this that the Drafting Committee has now brought forth this amendment in order to give an assurance to the provinces that no change will be made in the system of allocation unless a Bill to that effect is recommended by the President.

Mr. President: There is no amendment to this article.

Mr. President: Do you wish to speak. Dr. Ambedkar ?

The Honorable Dr. B. R. Ambedkar: I do not think any reply is necessary.

Article 254-A was added to the Constitution.

ARTICLE 255

Mr. President: We go to article 255.

(Amendment No. 83 was not moved.)

The Honorable Dr. B. R. Ambedkar: Sir, I beg to move:

" That in article 255, for the words ' revenues of India ', wherever they occur, the words ' Consolidated Fund of India ' he substituted.

" That in the first proviso to article 255, the words and figures ' for the time being specified in Part I of the First Schedule ' be omitted.

" That in clause (a) of the second proviso to article 255, for the words ' three years ' the words ' two years ' be substituted. "

The first two amendments are just formal.....

Mr. Naziruddin Ahmad : On a point of Order. No. 86 is entirely new and not related to anything. It is not a formal matter. It is a serious matter.

The Honorable Dr. B. R. Ambedkar: That is what I am trying to explain.

Mr. Naziruddin Ahmad : It is not an amendment to an amendment. It is an amendment to the Constitution.

The Honorable Dr. B. R. Ambedkar: I move it with the permission of the Chair.

Mr. Naziruddin Ahmad : I wanted Dr. Ambedkar to be forced to take the permission of the Chair to move it.

The Honorable Dr. B. R. Ambedkar: I have taken his permission. The President can give his permission before or after moving it.

This matter refers to grants and the provision in the original article itself is that an average of three years should be paid to Assam. It was represented to us that if the average of three years is taken, the Assam Government will get very little because in the first year they did not spend anything but if we took the average of two years, they would get more. It is to meet this difficulty that the Drafting Committee has introduced the words two years instead of three years.

ARTICLE 255 (Contd.)

The Honorable Dr. B. R. Ambedkar (Bombay : General) : Mr. President, Sir, I can at once say that I am prepared to accept the amendment moved by my Friend, Mr. Nichols Roy. The draft of this article does seem to give the impression that until Parliament determines each year what the grants are to

be, the President will have no power to do so. That certainly is not the intention of the Drafting Committee. The Drafting Committee would like the President to exercise his powers of making grants under article 255 even before Parliament has made any determination of this matter. And in order to make this position quite clear, I am, as I said before, prepared to accept the amendment moved by Mr. Nichols Roy. I would, however, at this stage, like to say that I have not yet had sufficient time to examine the exact language he has put in his amendment ; and therefore, subject to the reservation that the Drafting Committee would have the liberty to change the language in order to suit the text as it stands in article 255, I am prepared to accept his amendment.

Mr. President: I will now put the amendments to vote.

[All the amendments of Dr. Ambedkar, as given above, were adopted.]

Mr. President: And then I put Rev. Nichols Roy's amendment.

The question is :

" That in article 255,—

(a) after the words ' Parliament may by law provide ' the words 'or until Parliament thus provides, as may be prescribed by the President ' be inserted ;

(b) after the words ' Parliament may determine ' the words ' or until Parliament determines as the President may determine ' be inserted ; and

(c) the following Explanation be added at the end of the article :—

" *Explanation.*—The word " prescribed " has the same meaning as in article 251 (4) (b)."

The amendment was adopted.

[Article 255, as amended, was added to the Constitution.]

ARTICLE 256

Mr. President: We now take up article 256. Amendment No. 2925 by Dr. Ambedkar, in Vol. II, of the printed list.

The Honorable Dr. B. R. Ambedkar : Sir, I move :

"That for clause (1) of article 256 the following-clause be substituted:—

' (1) Notwithstanding anything in article 217 of this Constitution, no law of the legislature of a State relating to taxes for the benefit of the State or of a municipality, district board, local board or other local authority therein, in respect of professions, trades, callings or employments shall be invalid on the ground that it relates to a tax on income. ' "

Sir, it is proposed in a subsequent article to permit local authorities to levy certain taxes on professions, trades callings and employments up to a certain limit. It is feared that such a tax, if levied by the State, might be called in

question on the ground that it amounts to a tax on income and being within the exclusive authority of the Center. It is to prevent any such challenge to any law made for the purposes mentioned in sub-clause (1) that this provision has been deemed by the Drafting Committee to be very necessary, and accordingly I move this amendment.

Mr. President: Then Nos. 89 and 90 in the name of Mr. P. D. Himatsingka. He is not moving them. No. 91 in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Sir, I do not wish to move it.

The Honorable Dr. B. R. Ambedkar: Sir, I do not think that any very detailed reply is called for. The position is simply this, that in every Constitution the taxing resources of a State are generally distributed between the Center and the States. The question of distributing the resources between the States and the local authorities is left to be done by law made by the State, because the local authority is purely a creation of the State. It has no plenary jurisdiction ; it is created for certain purposes ; it can be wound up by the State if those purposes are not properly carried out. This article, which I am proposing, is really an exception to the general rule that there ought to be no provision in a Constitution dealing with the financial resources of what are called local authorities which are subordinate to the State. But having regard to the fact that there are at present certain local authorities and their administration is dependent upon certain taxes which they have been levying and although those taxes have been contrary to the spirit of the Income-tax law, the Drafting Committee, having taken into consideration the existing circumstances, is prepared to allow the existing state of affairs to continue. In fact exception was taken to the limit fixed by the Expert Committee which was Rs. 250. The proposal was that it ought to be brought down to Rs. 150. The Drafting Committee on reconsideration decided that that need not be done and under the present state of affairs may be continued up to the limit and within the scope that it occupies today. I therefore say that this is a pure exception, and on principle I am definitely opposed to it and I am therefore not prepared to accept any amendment that may have been moved by any Honorable Friend.

[Amendment of Dr. Ambedkar, as given earlier was adopted and the Article 256, as amended was added to the Constitution.]

ARTICLE 257

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That the words ' by law ' he added at the end of article 257. "

It is a little inadvertent omission.

Mr. President: There are two other amendments which do not arise after the amendment of Dr. Ambedkar. "

The amendment as above was adopted.

Article 257 as amended, was added to the Constitution.

ARTICLE 259

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That in clause (1) of article 259, for the word ' Auditor-General ' the words ' Comptroller and Auditor General ' be substituted. "

This is done in order to bring the same monenclature in article 259 which has been given to this officer in the previous article this Assembly has passed.

The amendment was adopted.

Article 259, as amended, was added to the Constitution.

ARTICLE 260

Mr. President: Then we go to article 260.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That for amendment No. 2943 of the List of Amendments, the following be substituted:—

That for clause (1) of article 260, the following clause be substituted:—

' (1) The President shall, within two years from the commencement of this Constitution and thereafter at the expiration of every fifth year or at such earlier time as the President considers necessary, by order, constitute a Finance Commission which shall consist of a Chairman and four other members to the appointed by the President. ' "

Sir, the point of this amendment is this. Originally, as the article stood) it stated that the Commission shall be appointed at the end of five years. It is felt that it is necessary to permit the President to appoint the Commission much earlier and consequently we are now providing that it should be appointed within two years from the commencement of the Constitution.

Mr. President: You may move amendment No. 96 also.

The Honorable Dr. B. R. Ambedkar: Sir, I move :

" That in sub-clause (b) of clause (3) of article 260, for the words ' revenues of India ' the words ' Consolidated Fund of India ' be substituted. "

This is a formal one.

Mr. President: There are amendments to this article, which have been printed in the Book.

Pandit Hirday Nath Kunzru : ...This article shows that the framers of the Constitution feel that under the provisions of article.....

The Honorable Dr. B. R. Ambedkar: It has not been passed yet.

Pandit Hirday nath Kunzru : That is why I am referring to it now otherwise there would have been no point in referring to it.

The Honorable Dr. B. R. Ambedkar: I have a right to withdraw it.

Pandit Hirday Nath Kunzru : Dr. Ambedkar says he has a right to withdraw it. I hope he will be wise enough to withdraw it.

The Honorable Dr. B. R. Ambedkar: No, it might be modified.

The Honorable Dr. B. R. Ambedkar: Sir, the House must have realised that my Honorable Friend Dr. Kunzru 's amendment referred to clause (3) of article 260 where the functions of the Finance Commission are laid down. But, in order to understand the exact significance of the amendments he has moved, I personally feel that it is desirable to know the method of allocation of revenues already provided for in the two articles we have already passed; namely 251 and 253. It will be realised that the Draft Constitution separates the distribution and allocation of the income-tax from the distribution and allocation of central duties of excise. With regard to income-tax the distribution and allocation of the proceeds is a matter which is left to the President to decide. That will follow from reading article 251(2) with clause (4) (b) (i) and (ii). On the other hand with regard to the distribution and allocation of the proceeds of the central duties of excise the matter is left entirely to be determined by law made by Parliament, which you will find set out clearly in article 253. As it is one O'clock I will continue my speech tomorrow. The Assembly then adjourned till 9 of the clock on Wednesday, the 10th August 1949.

ARTICLE 260 (Contd.)

Mr. President: Dr. Ambedkar.

The Honorable Dr. B. R. Ambedkar (Bombay : General) : At the close of yesterday's sitting. Sir, I was dealing with the argument advanced by my Friend Pandit Kunzru in support of his amendment. I began by saying that it was desirable to remind the House of the provision contained in article 251(2) and article 253 as a sort of background to enable Honorable Members to follow what exactly Pandit Kunzru wanted by his amendment.

Now I would briefly summarise what I said yesterday. The position is that so far as income-tax is concerned, the distribution and allocation of the proceeds are left to the President to determine, while the distribution and allocation of the Central duties of excise are left to be determined by law made by Parliament.

The next point to bear in mind are the provisions contained in article 260 which deals with the Finance Commission. Under clause (3) of article 260, it is provided that the Finance Commission is to advise and make recommendations with regard to the distribution and allocation, not merely of the taxes which are made distributable by law made by Parliament, but also, with regard to the distribution and allocation of the income-tax. Now, what my Friend, Pandit Kunzru, wants to do, if I have understood him correctly, is that he wants to take out the collection, allocation and distribution of income-tax from the purview, so to say of the Finance Commission. His point was this that while the President may well take the advice of the Finance Commission in making the allocations of Central duties of excise, he should be, so to say, made independent of the Finance Commission with regard to the income-tax. The only qualification that he wants to urge is this that so far as the initial distribution of the income-tax is concerned, the President may well consult the Finance Commission and act in accordance with or after' taking into consideration the recommendations made by the Finance Commission, but any subsequent variation of the income-tax allocation may be left to be done by the President independently of any recommendations that may be made by the Finance Commission. I think I am right in interpreting what he intends to do by his own amendment. The question, therefore, is a very simple and small one. Should the President be left altogether independent of any recommendations of the Finance Commission in varying the distribution of the income-tax between the provinces and the Center and the allocation of the proceeds of the income-tax so set apart between the different provinces ? The draft amendment as I have moved provides that the President shall take into consideration the recommendations of the Finance Commission in making any variations that he may want to do with regard to the distribution and allocation of the income-tax. I quite appreciate his point of view that, if

this was left to be decided by the President on the recommendations of the Finance Commission, the hands of the President may be so tied that he may have to yield to the recommendations of the Finance Commission or to the clamour that may be made by the provinces with the result that he may be forced to do injury to the Central finances. I share his feelings that the Center should be made as independent as one can make it so far as finance is concerned, because in my mind there can be no doubt that we must not do anything in the Constitution which would jeopardise either the political or the financial existence of the Central Government, but there is also the other side to the matter, viz., supposing there was a clamour made by all the provinces, which is perfectly possible to imagine because it is their common interest, urging the President to allocate more revenue to the provinces, would it not be placing the President at the mercy of the provinces ? If, on the other hand, there was a report of the Commission containing recommendations that the Center should not give more revenue under the income-tax to the provinces, it would, in my judgment, strengthen the hands of the President in refusing to accede to such a clamour from the provinces. If I may use the language with which we are now familiar under the Government of India Act, the difference between the draft article as it stands now and the amendment proposed is that according to Pandit Kunzru, the President should be free to act in his discretion, while the draft, as proposed by me says that he should act in his individual judgment which means.....

Pandit Hirday Nath Kunzru (United Provinces : General) : Will the Honorable Member permit me to make my point clear, because I feel that he has probably not completely understood what I said ? May I make clear what I said in one or two sentences. Under clause (3) of article 260 the President may refer any matter he likes to the Finance Commission for its opinion. I do not, therefore, want to debar the President from consulting the Commission in any matter that he likes. All that I am objecting to is that the Finance Commission without any reference from the President, should have the power to say that the allocation of the net proceeds of the income-tax between the Center and the provinces is not what it should be and that new percentages recommended by it should be fixed. This is all that I said yesterday.

The Honorable Dr. B. R. Ambedkar: That rather makes the situation far more complicated because I cannot see how the Finance Commission can make any recommendation unless the point has been specifically referred to it or included in the terms of reference.

Pandit Hirday Nath Kunzru : Under sub-clause (a) of clause (3) of article 260 the Commission may on its own initiative make recommendations on that

subject. Let my Friend read the sub-clause to understand the meaning.

The Honorable Dr. B. R. Ambedkar: " any other matter referred to the Commission by the President in the interest of sound finance. "

Pandit Hirday Nath Kunzru : That is (d). Will the Honorable Member refer to article 260, the article which we are discussing, with particular reference to the clause that I dealt with yesterday ? Sub-clause (a) of clause (3) of article 260 says—

" It shall be the duty of the Commission to make recommendations to the President as to the distribution between the Union and the States of the net proceeds of taxes which are to be, or may be, divided between them..... "

That is the thing that I am objecting to. The power of the President under sub-clause (d) of clause (3) to refer any other matter that he likes to the Finance Commission will not be disturbed if my amendment is accepted.

The Honorable Dr. B. R. Ambedkar: I do not know. The position is quite clear whether the President is to be left in his complete discretion to make any allocation he likes with regard to the income-tax or whether he should be guided by the recommendations made by the Commission. It seems to me that the position of the President will be considerably strengthened if he could refer as a justifying cause to the recommendations made by the Finance Commission. It seems to me that the Finance Commission will be acting as a bumper between the President and the provinces which may be clamouring for more revenue from income-tax. I therefore do not think there is any reason for accepting the amendment moved by my Friend, Mr. Kunzru.

Mr. President: I have now to put the two amendments to the vote. First, amendment No. 95 moved by Dr. Ambedkar.

[Dr. Ambedkar 's amendment was adopted. Article 260, as amended, was added to the Constitution.]

PART II